

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

REDDY VIJAY ANNAPPAREDDY)
Plaintiff,) Trial Day 3
vs.) Civil No.
PAM ARNOLD, et al.) 18-cv-3012-JFA
Defendants.) Baltimore, Maryland
June 2, 2023
9:30 a.m.

THE ABOVE-ENTITLED MATTER CONTINUED FOR
BENCH TRIAL
BEFORE THE HONORABLE JOSEPH F. ANDERSON, JR.

A P P E A R A N C E S

On Behalf of the Plaintiff:

JOSHUA D. GREENBERG, ESQUIRE
KOBIE FLOWERS, ESQUIRE

On Behalf of the Defendant United States of America:

MATTHEW P. PHELPS, ESQUIRE
MOLISSA H. FARBER, ESQUIRE
LAWRENCE EISER, ESQUIRE

Also Present:

Reddy Vijay Annappareddy
Keegan Miller, Law Clerk

(Computer-aided transcription of stenotype notes)

Reported by:

Ronda J. Thomas, RMR, CRR
Federal Official Reporter
101 W. Lombard Street, 4th Floor
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1 (9:30 a.m.)

2 **THE COURT:** Good morning. Please be seated.

3 Yesterday, late in the afternoon, we had an objection to
4 two exhibits that I deferred ruling on so I could take them
5 home overnight and study the exhibits and rule this morning.

6 We're talking about Exhibits 71 and 59. The objection was
7 lodged by the Plaintiff on the grounds that these documents
8 both postdate the date of the Lating interview. And
9 Mr. Greenberg suggested that my order granting the motion *in*
10 *limine* and keeping out the OPR report limited consideration of
11 anything that postdates the Lating interview, but I think
12 that's incorrect.

13 Here's what I had. I'm reading from the transcript at the
14 conclusion of our pretrial conference two weeks ago. This was
15 right after we broke for lunch. I said, "Let me now go back
16 and address some motions we heard this morning and announce a
17 ruling orally here. I think I owe it to the parties to let you
18 know how you stand because we are in final trial preparation.
19 The first one, Motion 304, on the so-called after-acquired
20 evidence issue or the causation issue or the damages issue,
21 whatever you want to call it, it appears the parties agree that
22 the after-acquired evidence in this case is not admissible
23 generally to show probable cause or malice. I think both sides
24 are on board with that principle. But, however, I'm going to
25 determine that after-acquired evidence may be entered for other

1 purposes, subject to further objections to be made at trial,
2 such as hearsay and other matters which we'll handle on a
3 case-by-case basis in the context of trial."

4 That's my ruling on Motion 304. I don't think I could
5 have been any clearer. There's no per se bar on documents
6 coming in that postdate the Lating affidavit if they are
7 relevant to the issues tried in this case.

8 So the objection to the extent it's grounded upon timing
9 is overruled.

10 But we still have some hearsay issues in these two
11 documents. The first one, 59, Exhibit 59, is a report
12 authorized by Agent Robert Mosley of an interview that he did
13 with Daniel Walker who owns another pharmacy, and it gives
14 information such as Walker believed the Plaintiff to be
15 physically abusive and talks about when the Plaintiff became
16 aware of the investigation.

17 So why isn't that hearsay? I guess I'm asking the
18 defense. Are you offering it for the truth of those
19 assertions?

20 **MR. EISER:** Agent Mosley is coming in today, so we'll
21 address that. I'll withdraw the attempt --

22 **THE COURT:** You're not offering at this time?

23 **MR. EISER:** Not at this time.

24 **THE COURT:** All right. But you need to know we've got
25 a hearsay issue we've got to deal with. Now, whatever

1 Mr. Annappareddy said would be a statement of a party opponent,
2 would be excluded from hearsay. But there may be some other
3 hearsay issues in that document.

4 The other one was authored by the witness on the stand,
5 Agent Lating, and it's an interview with Ryan Harris who was
6 with a financial company known as NVP, about the possibility of
7 pairing up with Mr. Annappareddy to help fund his business.
8 This also postdates the Lating affidavit. And the bottom line
9 on this interview, is that Mr. Harris came to not trust
10 Mr. Annappareddy as a trustworthy person, and he determined
11 that he had lied to a third party about whether he had a deal
12 worked out or not.

13 Is that not being offered for the truth of the matter
14 asserted? I mean, isn't that hearsay?

15 **MR. EISER:** It's actually being offered as rebuttal to
16 the report that the Plaintiffs have already submitted, which is
17 entirely hearsay of Mr. Harris's prior communications when they
18 were still talking about the possible investment of
19 Mr. Harris's firm with Pharmacare. So that's already in
20 evidence.

21 **THE COURT:** So the Plaintiff offered that earlier in
22 evidence?

23 **MR. EISER:** Yes.

24 **MR. GREENBERG:** That's not correct.

25 **THE COURT:** All right. We got, factually, somebody

1 right and somebody wrong. So who's right and who's wrong on
2 this?

3 Mr. Greenberg, you say you did not offer that earlier
4 evidence about Mr. Harris pairing up and offering financing?

5 **MR. GREENBERG:** Well, he is conflating --

6 **THE COURT:** I want "yes" or "no." Did you offer
7 information about that episode?

8 **MR. GREENBERG:** Episode in 2012, not about 2014.

9 **THE COURT:** Well, this 2014 interview is looking back
10 at things that happened earlier.

11 **MR. GREENBERG:** Right, it is. But it's after-acquired
12 evidence, and it's hearsay about what Harris, after the
13 indictment is now saying when the Government comes and talked
14 to him. He never said any of this stuff in 2012. In 2012, the
15 Government had -- the Government never interviewed him before
16 the Lating affidavit was presented. This is hearsay, post
17 indictment. And to the extent that there's, you know, I
18 understand Your Honor is -- thank you for clarifying the issue
19 about we can still object to the so-called causation.

20 I mean, this is an entirely speculative line of inquiry
21 and evidence. If they're going to bring in after-acquired
22 evidence to show there hypothetically would have been
23 indictment anyway but for the Lating affidavit, a whole flood
24 of people started talking with them, and they talked with
25 people they never would have talked to after the Lating

1 affidavit was presented, after the indictment was returned by
2 the grand jury on July 23rd, 2013. And, most importantly,
3 after Pharmicare was destroyed by the Lating affidavit, on
4 July 23rd -- 25th -- I'm sorry -- 2013, all of this stuff about
5 causation violates the rules that we cited in our motion *in*
6 *limine*, it is impermissible speculation, it is hypothetical,
7 they don't have an expert --

8 **THE COURT:** It's not speculation and hypothetical. It
9 says Mr. Harris just came to not trust your client. I'm not
10 saying he's correct. I'm not choosing sides here, but it's not
11 speculation and hypothetical. He flat out says he was a
12 compulsive liar. It's not speculative.

13 **MR. GREENBERG:** Maybe I wasn't clear. I was talking
14 more broadly about the so-called causation issue. Let me focus
15 on the specifics. So on the specific --

16 **THE COURT:** Let me interrupt. What did you offer
17 about the dealings with Mr. Harris. What did you put in?

18 **MR. GREENBERG:** Well, I don't think we put it in
19 evidence, but our business valuation expert relied on a
20 valuation in, I believe it was, January 2012 by Mr. Harris's
21 firm. Now, you know, he didn't say any of this stuff then.
22 You know, it's not terribly surprising that people --

23 **THE COURT:** We haven't gotten to business evaluation
24 and damages in this hearing.

25 Mr. Eiser, you said he offered this earlier --

1 **MR. EISER:** Yeah, it was submitted. We had an
2 agreement to submit the business, the damage valuation --

3 **THE COURT:** So the damages issue that we're going to
4 get to later, based upon the two experts's written reports,
5 raises Harris.

6 **MR. EISER:** Yes.

7 **MR. GREENBERG:** Well, it raises Harris as of
8 January 2012. It doesn't raise Harris confronted with a
9 wrongful indictment and now being interviewed by federal agents
10 many months after Pharmacare is destroyed --

11 **THE COURT:** Let's just defer ruling on this one. Do
12 you need to ask Agent Lating about this document that she
13 created? Can't we defer to this until we get to the damages in
14 the expert reports and take it up then, and I think focus on it
15 better then, I think.

16 **MR. GREENBERG:** I think that makes sense, Your Honor.
17 I think also, respectfully, Your Honor is exactly right. This
18 is hearsay.

19 **MR. EISER:** Just as Your Honor pointed out, in
20 addition to Mr. Harris's statement about no investment, as you
21 point out, he also talked about Mr. Annappareddy being
22 untrustworthy and abusive. And Rule 803(21), exception to
23 hearsay rule, allows for evidence of reputation concerning
24 character. So that's directly on point.

25 **MR. GREENBERG:** Your Honor, we actually object more

1 broadly with what the Government is doing here. They know
2 you're the trier of fact. They are injecting all this post
3 after-acquired evidence to try to influence you with the
4 negative statements that are hearsay, and you're hearing all of
5 it, and they're trying to influence you.

6 **THE COURT:** Let's just defer on this.

7 Mr. Eiser, let me just say the hearsay exception you
8 cited; true, there is a hearsay exception for that type of
9 evidence, but it is only in a case where character is
10 admissible under the rule on character evidence. And normally,
11 evidence of someone's character is not admissible to show that
12 he acted in conformity with that character on a particular
13 occasion. There are exceptions to it, such as negligent
14 hiring, negligent entrustment, and so forth, where a person's
15 character is a part of the claim. I think that hearsay
16 exception matches up with that limited exception of the bar on
17 character evidence. We can talk about that later.

18 I'm going to defer ruling on of the Defendant's
19 Exhibit 71.

20 And with that, let's bring Ms. Lating back and continue.

21 **MR. EISER:** Thank you, Your Honor.

22 **MR. GREENBERG:** Thank you, Your Honor.

23 **THE COURT:** All right.

24 Start the clock.

25 Please continue, Mr. Greenberg.

1 **THE CLERK:** Your Honor, do you want me to swear in the
2 witness again?

3 **THE COURT:** It's not necessary.
4 Agent Mosley Lating, you're still under oath.

5 **THE WITNESS:** Yes, Your Honor.

6 **THE COURT:** Very good.
7 Please continue.

8 - - -

9 **REDIRECT EXAMINATION**

10 - - -

11 **BY MR. GREENBERG:**

12 **Q.** Good morning, Ms. Lating.

13 **A.** Good morning, Mr. Greenberg.

14 **Q.** Let's turn to the notes that were provided almost at the
15 end of the day yesterday by Government counsel that you
16 prepared, and they've been marked as --

17 **MR. EISER:** Ninety-six.

18 **MR. GREENBERG:** Oh, that's right. All right. They're
19 Government's Exhibit 96? For now, let's do them for
20 identification if they're already in for identification.

21 **THE WITNESS:** Okay. Sure.

22 **MR. GREENBERG:** Can you bring them up on the screen,
23 please.

24 **BY MR. GREENBERG:**

25 **Q.** Ms. Lating, did you prepare these notes entirely by

1 yourself?

2 A. I did.

3 Q. And these notes you prepared after reviewing the same
4 materials that you reviewed for when you prepared the Lating
5 affidavit, right?

6 A. I'm not sure I had all of the reports when I picked them
7 up on Friday, what I had back in 2013. But it looked like a
8 lot of what I had reviewed back in 2013.

9 Q. But the purpose, the reason you prepared this document was
10 to identify -- I'm not using "source" in the law enforcement
11 sense, okay, I'm using "source" in sort of the layperson's
12 sense. You were -- the purpose of you preparing this document
13 was to identify the source of the statements in the Lating
14 affidavit from Paragraph 13 through Paragraph 43, correct?

15 A. Yes.

16 Q. And so what you were doing -- and just to be clear, you
17 wanted to have the source of the paragraphs -- source of the
18 information for the statements in the paragraphs in the
19 affidavit you believe are relevant?

20 A. Yes. I wanted to reenact when what I experienced back in
21 January of 2013 when I got the notebook. Because it had been
22 so long, I just wanted to remember, like, for each paragraph
23 that I drafted, the best I could to identify where could I have
24 pulled that from. And that's why I did this, to see -- because
25 I, at times, extracted just sentences from Laurie Gutberlet's

1 reports and put it into the affidavit so I would do her work
2 justice and not create my own sentences.

3 Q. Right. So you, essentially -- well, like you said, it was
4 a reenactment.

5 A. It helped me prepare for this week, yes.

6 Q. Yeah, to identify the source that, at the time, back in
7 2013, you had relied on for the statement for each of these
8 paragraphs.

9 A. Correct. And I would do the same preparation for
10 suppression hearing, so it was something I came up with, and I
11 asked the United States Attorney's Office for the records.

12 Q. Okay. Very good.

13 MR. GREENBERG: We would move this document into
14 evidence.

15 THE COURT: The rule says it's discretionary whether
16 it comes into evidence or not. Why does it need to come in? I
17 think you made your point. I heard what she said.

18 MR. GREENBERG: I don't understand. I'm not
19 getting --

20 THE COURT: First of all, any objection to the
21 document coming in?

22 MR. EISER: No.

23 THE COURT: All right. Admitted.

24 MR. GREENBERG: Okay. All right. So that's --
25 Government's Exhibit 96 is admitted.

1 **BY MR. GREENBERG:**

2 **Q.** Let's turn to the other points about the Lating affidavit.
3 Can you please turn to Tab 7 in your binder?

4 **THE COURT:** Did we get an exhibit number for the
5 document?

6 **MR. GREENBERG:** I think it was
7 Government's Exhibit 96.

8 **MR. EISER:** Yes.

9 **THE WITNESS:** Yes.

10 **MR. GREENBERG:** Your Honor, apparently the gallery
11 monitors are not on. Is it possible for the Court to turn them
12 on?

13 **THE COURT:** We'll work on that.

14 **BY MR. GREENBERG:**

15 **Q.** Ms. Lating, you were asked a number of questions by
16 Government counsel yesterday about the Lating affidavit, right?

17 **A.** Yes.

18 **Q.** I'm not going to respond to all of them, in the interest
19 of time, but I do want to point out a couple of things in the
20 affidavit that may not have been asked about.

21 **A.** Okay.

22 **Q.** Can you please turn to Page 39 of the affidavit, and
23 that's Plaintiff's Exhibit 70, top of the page in the ECF
24 heading that might be easier to find is Page 44.

25 **A.** Page 44.

1 Q. On the ECF heading at the top.

2 A. All right. Yes, sir.

3 Q. All right. This is a carryover of Paragraph 64 starting
4 on the previous page, it says -- and I'm just excerpting here,
5 quote, "To conduct this initial examination, your affiant
6 proposes that the computer and its internal hard drive and
7 related equipment be removed to the safekeeping of the FBI or
8 other appropriate law enforcement agency, to permit examination
9 of the contents of the hard drive files to locate all the
10 magnetically stored documents within the scope of the warrant.
11 The records and the hard drive are inseparable in the sense
12 that no single record can be seized in its original form on the
13 computer without seizing the hard drive and the related
14 equipment necessary to review the data," end quote.

15 That's accurate, right?

16 A. It's my standard language I put in when I'm going to be
17 seizing computers, yes.

18 Q. Okay. And you made the decision to include this standard
19 language in the Lating affidavit?

20 A. Because we anticipated that we would either have to seize
21 or at least image computers since that's how a pharmacy
22 business is run.

23 Q. Well, but here, in Paragraph 64, in the language I just
24 read, you specifically talked about removed and seized, right?

25 A. It gives us the option if our computer examiners --

1 Q. Ma'am, it specifically says --

2 A. Yes, it does.

3 Q. And it doesn't say image, does it?

4 A. No, it doesn't.

5 Q. We can move on from this.

6 Let's turn to ECF Page 47. I want to refer you to, this
7 is the Government's motion to seal attached to your search
8 warrant application.

9 Do you see that?

10 A. Yes.

11 Q. And you see Paragraph 2, that last sentence -- actually,
12 I'll just read it.

13 Quote, "The targets and individuals mentioned therein are
14 unaware of the investigation," end quote.

15 Do you see that?

16 A. Yes.

17 Q. That was your understanding as of July 23rd, 2013,
18 correct?

19 A. Absolutely. I was unaware that they knew they were under
20 investigation.

21 Q. Thank you. We can move on from this.

22 As far as you knew, the same was true for the other folks
23 in the investigation?

24 A. Can you identify who you're --

25 Q. So you were unaware -- I mean, as far as you know, as of

1 July 23rd, 2013, the targets and individuals mentioned therein,
2 including, obviously Mr. Annappareddy, were unaware of the
3 investigation, right?

4 A. Correct.

5 Q. That was the whole point of the sealing motion?

6 A. If you're referring to Vipin Patel and Jigar Patel and
7 Mr. Annappareddy --

8 Q. Yes.

9 A. -- yes, I had no knowledge that any of them knew about the
10 investigation.

11 Q. And to the best of your knowledge, no one else in the
12 investigation team had any such knowledge, right?

13 A. None that related to me, no. I have no knowledge that
14 anyone relayed to me that they were aware of the investigation.

15 Q. So the answer is "correct"?

16 A. That's correct.

17 Q. All right. We can move on from this.

18 There are some statements earlier in your affidavit -- I
19 don't know if we need to get to the exact paragraph -- about
20 Mr. Annappareddy and Pharmacare being involved in a scheme to
21 send Med-4 drugs that were billed for and not delivered to
22 India. Do you remember that?

23 A. Yes. It's early in the affidavit.

24 Q. And you knew, basically as soon as you got involved in the
25 investigation, these Med-4 drugs cost several hundred, even

1 thousands of dollars for each prescription, right?

2 A. Yes.

3 Q. And you knew that the price of prescription drugs in India
4 is dramatically lower than the U.S., right?

5 A. I'm not sure I knew that, no.

6 Q. Okay. That's not something you found relevant to ask
7 about?

8 A. No, no.

9 Q. So you didn't know that in India, these very same drugs,
10 like HIV drugs, were available for, like, not even maybe
11 pennies on the dollar?

12 A. I wasn't aware of that. I'm still not aware -- this is
13 the first time I'm hearing that from you.

14 Q. From me. But it's the first time you're hearing it from
15 anybody?

16 A. Correct. Absolutely.

17 Q. So Special Agent Mosley never told you that sending Med-4
18 drugs to India, where they could be sold for one thousandth,
19 one hundredth, I don't know the exact number, but some small
20 fraction of the price that Pharmacare bought them for makes no
21 sense? He never told you that, did he?

22 A. No.

23 Q. Okay. We can move on from that topic --

24 **THE COURT:** Let me jump in here and ask a question.
25 I'm not sure how terribly important it is.

1 But yesterday, a chart was put up on how many pills of the
2 cancer medicine -- or the HIV medicine, and I did the math, and
3 it came to over a thousand dollars per pill; is that correct?

4 **MR. GREENBERG:** No -- sorry, Your Honor.

5 **THE COURT:** Could some be that expensive?

6 **MR. GREENBERG:** No, no. So the per-pill price is in
7 dollars -- I'm sorry, in, like -- so, for example -- I'm going
8 from memory here, so I don't really -- you know. I believe
9 Kaletra, for example, the price is something like \$6 and some
10 cents per pill.

11 **THE COURT:** Per pill.

12 **MR. GREENBERG:** For Atripla, it was more. It's
13 definitely more. Atripla was the most expensive.

14 But it was per prescription that it got to the thousands,
15 for some of them. Some of them was in the hundreds.

16 **THE COURT:** My brother had lung cancer, and he took a
17 cancer drug, and it cost \$500 per pill. So I know there are
18 examples of terribly expensive medicine, but we're not talking
19 about anything near that level here?

20 **MR. GREENBERG:** I don't think so, Your Honor. I'm
21 going from memory.

22 **THE COURT:** I guess I'm just curious. I don't think
23 it really affects the merits of this case, but I'm just
24 curious, one bottle of pills, how much money are we talking
25 about if there were 20 pills in there. Not anything like what

1 I thought it might have been.

2 **MR. GREENBERG:** So I'm a little reluctant to do this
3 from memory, and I could turn to MEDIC 1495 -- well, actually,
4 the Government has an exhibit that probably has the dollar -- I
5 think it's exhibit from Plumtree that probably has that
6 information. Let me pull that up. It's Government's
7 Exhibit 36 --

8 **THE COURT:** It's not -- I don't want to burn up your
9 time doing that. We can do the math later.

10 **MR. GREENBERG:** Okay. All right. I mean, I just
11 don't want -- there might be some outliers that, you know,
12 where what you described the price might be that expensive.
13 But I'm just saying as a general matter, for these HIV drugs,
14 it's certainly not the case.

15 **THE COURT:** All right.

16 **BY MR. GREENBERG:**

17 **Q.** You testified, when you were being asked questions by
18 Government counsel yesterday, that Ms. Ridolfi had a lot to
19 lose, right?

20 **A.** I said she's going to be losing her job cooperation with
21 us. Because -- and --

22 **Q.** You didn't mention that Ms. Ridolfi was applying for a job
23 with a Maryland government agency at the same time, did you?

24 **A.** I did not know that.

25 **Q.** You didn't know that?

1 A. I did not know that.

2 Q. Really?

3 So no one ever told you that the MFCU was sending
4 information about Ridolfi's job application to the Maryland
5 Department of Health and Mental Hygiene in 2012?

6 A. No, no.

7 Q. You're 100 percent certain?

8 A. I'm 100 percent certain.

9 Q. We've got your word on that?

10 MR. EISER: Objection. This is harassment.

11 THE COURT: Overruled. Overruled. It's an adverse
12 witness. Overruled.

13 BY MR. GREENBERG:

14 Q. All right. And you also testified, I believe, so -- okay.
15 So you weren't aware that Ms. Ridolfi was seeking to get a job
16 with the very state government that was doing the
17 investigation, right?

18 A. Correct. In 2012, correct.

19 Q. What about in 2013, were you aware of that then?

20 A. No.

21 Q. Again, you're 100 percent certain?

22 A. I learned about it from Cathy Pascale, Christmas 2016. I
23 was working on another case at Medicaid, and she came in and to
24 see how I was doing, and she mentioned that. So that was
25 December -- a week before Christmas, I think, in 2016.

1 Q. Okay. So -- and you knew, during the investigation you
2 certainly knew, that Ms. Ridolfi wanted to find a new job,
3 right, of some kind?

4 A. I didn't know that. I didn't know that.

5 Q. You didn't know there were texts between Pamela Arnold and
6 Lisa Ridolfi about Ridolfi finding a new job?

7 A. No.

8 Q. Pam Arnold never told you that?

9 A. I would imagine the woman was looking for a new job
10 because she knew her days at Pharmacare were probably going to
11 be over eventually, so -- no, I absolutely did not know. But
12 I'm not surprised the woman was looking for another job. I
13 would be, too.

14 Q. But I want to be clear. The question is: Pam Arnold
15 never told you that there were texts between her and
16 Ms. Ridolfi about Ms. Ridolfi applying for a new job?

17 A. No, no.

18 Q. Okay. I want to make sure we're clear on this, you don't
19 remember Laurie Gutberlet telling you that in 2012, the topic
20 of the whistleblower came up between her and Ms. Ridolfi in a
21 conversation?

22 A. I'm sorry.

23 Q. I want to be clear --

24 A. I wasn't part of the case in 2012.

25 Q. I know.

1 A. Okay.

2 Q. But Ms. Gutberlet told you all of the information she
3 learned on the investigation, right? You testified to that.

4 A. Yes.

5 Q. And you don't recall Ms. Gutberlet telling you that she
6 had a conversation in 2012 with Ms. Ridolfi where the topic of
7 whistleblower was mentioned?

8 A. She never had that conversation with me. Laurie Gutberlet
9 never had that conversation with me. Never. Never.

10 Q. You don't recall it?

11 A. No, she never did. Because I would have personally sat
12 down with Ms. Ridolfi to discuss that in 2013.

13 MR. GREENBERG: I'm sorry, Your Honor, for that brief
14 interruption.

15 BY MR. GREENBERG:

16 Q. Let's see if we can clear something up. This is Laurie
17 Gutberlet's testimony.

18 (Video playing.)

19 MR. EISER: Objection. Objection.

20 THE COURT: Hold on.

21 What's the objection?

22 MR. EISER: This is the deposition of Maura Lating --
23 I mean of Laurie Gutberlet --

24 THE COURT: Mr. Greenberg, I normally don't allow an
25 attorney to pit one witness against another, to ask this

1 witness to explain another witness's answer. I mean, you
2 cross-examine that other witness and ask about it. So where
3 are we going with this?

4 **MR. GREENBERG:** We're going with this -- this is
5 directly -- well, it partially contradicts, at least, what
6 Ms. Lating testified to. And given the ambiguous testimony
7 that Gutberlet told her all of the information she had, I mean,
8 this is fair impeachment. Also, she's testified on a number of
9 occasions that, you know, she was the leader of the team, and
10 that's been almost a decade, and she doesn't remember some
11 things. And you can use anything to refresh recollection.

12 **THE COURT:** I just have a problem with asking one
13 witness to explain a discrepancy given by another witness in
14 the same case. That's what the fact-finder decides, who to
15 believe.

16 **MR. GREENBERG:** Your Honor, ordinarily, that would be
17 true. Respectfully, this is different because of the testimony
18 of both Laurie Gutberlet and Ms. Lating, that Ms. Gutberlet
19 gave Ms. Lating all of the information she had.

20 **THE COURT:** What's going to come out here if I allow
21 this in? Just go ahead and tell me.

22 **MR. GREENBERG:** I'm hoping that it will clarify things
23 for Ms. Lating, and that it will show that what she has said is
24 inaccurate.

25 **MR. EISER:** Ms. Lating could not have been clearer.

1 She didn't say "I don't remember." She said that didn't
2 happen. So there's no need to refresh her recollection, she
3 has no problem remembering this.

4 Also, this is deposition testimony of a witness who
5 testified. So it's hearsay.

6 **THE COURT:** Go ahead.

7 **MR. GREENBERG:** So this is -- again, I mean, this is a
8 sort of a maybe unique situation where we've got both
9 witnesses, the one who testified here, Ms. Gutberlet, and
10 Ms. Lating, they each testified in this trial unambiguously
11 that all of the information that Ms. Gutberlet had that was
12 important was conveyed to Ms. Lating. Ms. Lating testified
13 unambiguously she got all of that information from
14 Ms. Gutberlet. Is this a unique situation.

15 **THE COURT:** Well, I'm going to sustain the objection.
16 I can put it all in context. If this were a jury trial, I'd be
17 a little more concerned about it. But I'm going to sustain the
18 objection at this time.

19 So let's move forward.

20 **BY MR. GREENBERG:**

21 **Q.** Ms. Lating, let me ask the question a little differently.

22 You don't remember Laurie Gutberlet ever telling you that
23 Ms. Ridolfi had asked her in 2012, "How it would be for me to
24 be a whistleblower?"

25 **A.** We never had that conversation.

1 Q. You are 100 percent certain?

2 A. I am 100 percent certain.

3 Q. We've got your word on that?

4 MR. EISER: Objection.

5 THE COURT: All right. She said she's 100 percent
6 sure. That's enough.

7 BY MR. GREENBERG:

8 Q. And, just to be clear, you don't remember Ms. Gutberlet
9 ever telling you that the topic of being a whistleblower came
10 up in a conversation that Ms. Gutberlet had with Ms. Ridolfi in
11 2012?

12 MR. EISER: Objection, asked and answered.

13 THE COURT: Overruled.

14 THE WITNESS: The conversation never happened between
15 me and Laurie Gutberlet.

16 MR. GREENBERG: All right. I can move on.

17 BY MR. GREENBERG:

18 Q. Did Pam Arnold ever tell you before July 23rd, 2013, that
19 Ms. Ridolfi had asked anyone, "How would it be for me to be a
20 whistleblower?"

21 A. No. Pam Arnold and I never had that conversation.

22 Q. Special Agent Mosley never told you that either?

23 A. Special Agent Mosley never told me that either, no, sir.
24 No, sir.

25 Q. So Agent Mosley never told you that he was aware that

1 Ms. Ridolfi had written this letter about, you know, wanting to
2 be the whistleblower in July of 2013, weeks before you
3 submitted that affidavit?

4 A. We never had that conversation. I was not aware of any of
5 it. I never seen that letter until you showed it to me during
6 the deposition.

7 Q. Right. Whether you've seen the letter or not, though,
8 putting aside whether you saw that particular document, did Pam
9 Arnold tell you -- Pam Arnold now -- did Pam Arnold tell you
10 about the point that Lisa Ridolfi was looking to become the
11 whistleblower?

12 A. No, she did not.

13 Q. And did Special Agent Mosley tell that you Lisa Ridolfi,
14 as of at least early July 2013, was looking to become the
15 whistleblower?

16 MR. EISER: Objection. The letter, which is in
17 evidence, that was sent to the judge who signed the affidavit
18 just says "I have a question about it." Now, Mr. Greenberg
19 says that means she's looking to be, and it mischaracterizes --

20 MR. GREENBERG: I'm not characterizing --

21 (Cross talk.)

22 MR. GREENBERG: -- the speech. This is a speaking
23 objection. Let's stop the clock --

24 THE COURT: I'll overrule the objection. I think it's
25 fair.

1 Go ahead.

2 **BY MR. GREENBERG:**

3 **Q.** So Special Agent Mosley never told you, Ms. Lating, that
4 as of at least early July 2013, if not earlier, Lisa Ridolfi
5 was looking to become the whistleblower?

6 **A.** He never told me that.

7 **Q.** And the Lating affidavit does mention that Mr. Tokofsky
8 filed a *qui tam* complaint, right?

9 **A.** Yes. Paragraph 18. Correct.

10 **Q.** And the Lating affidavit says nothing about Lisa Ridolfi
11 expressing interest in becoming a whistleblower or the
12 whistleblower, right?

13 **A.** Because I didn't know that.

14 **Q.** But the answer is it says nothing about that, right?

15 **A.** It says nothing about --

16 **Q.** Correct?

17 **A.** Correct. Absolutely. Absolutely.

18 **Q.** All right.

19 You testified -- you were asked a bunch of questions about
20 this automatic refill calculation that was portrayed as
21 nefarious by Lisa Ridolfi, and I believe also by Dennis
22 Tokofsky for Med-4s. Do you know the 28 days minus three. Do
23 you remember that?

24 **A.** You need to rephrase that question because --

25 **Q.** All right. Do you remember being asked questions about

1 sort of a calculation for each month, I think it was 28 days
2 minus three days?

3 A. It's not nefarious. It's a standard formula that's used
4 by a lot of pharmacies on when it's time do a refill. And it's
5 eligible for a refill.

6 Q. And not only is it used by a lot of pharmacies, it was
7 actually encouraged by Maryland Medicaid Program advisory
8 issued in November 2011, specifically for HIV drugs, right?

9 A. I don't know that for a fact.

10 Q. You don't remember that?

11 A. No, I don't know that.

12 Q. Okay. Let me show you something to see if we can clarify
13 that. Plaintiff's Exhibit 2, please.

14 MR. EISER: Objection. She didn't say she didn't
15 remember, she said she didn't know it.

16 MR. GREENBERG: She said both.

17 THE COURT: Well, I'll let counsel explore it further.
18 Go ahead.

19 BY MR. GREENBERG:

20 Q. So this is a Maryland Medicaid Program advisory,
21 Plaintiff's Exhibit 2. I believe it was -- it's not in
22 evidence yet. I believe, going from memory, that the
23 Government stipulated to authenticity. And I believe it's
24 still on the website.

25 November 4, 2011. Do you see that date, Ms. Lating?

1 A. Yes.

2 Q. And that's close to two years before the Lating affidavit
3 was presented?

4 A. Yes.

5 Q. And the -- in the middle of the page, there's an all-bold
6 font, it says "Late Refills of HIV/AIDS Medications."

7 A. Okay. Yes.

8 Q. And then the sentence under that says, "In light of the
9 fact that poor antiretroviral medication refill adherence has
10 the potential for developing drug resistance profiles of HIV-1,
11 Medicaid pharmacy program will deny claims for any
12 antiretroviral drug that is refilled more than the 35 days
13 after the drug was previously dispensed for a 30-day supply,"
14 end quote.

15 Right?

16 A. Yes, that's what it says.

17 Q. So the Maryland Medicaid Pharmacy Program was
18 encouraging -- in fact, requiring pharmacies to do timely
19 refills for HIV patients, right?

20 MR. EISER: Objection. All she has is she read the
21 thing, she has no independent knowledge.

22 THE COURT: I think it speaks for itself. I don't
23 think she needs to comment. It speaks for itself.

24 BY MR. GREENBERG:

25 Q. Ms. Lating, does this refresh your recollection?

1 A. Does it refresh -- I see nothing wrong with the 28-day
2 minus three-day formula. So yeah, there's nothing wrong with
3 this. I totally -- that's fine. I mean . . .

4 Q. Okay.

5 MR. GREENBERG: Your Honor, we would move this into
6 evidence. It's a -- I mean, not only is it relevant for the
7 reasons that Ms. Lating stated, but it's an official government
8 document on the website of the Maryland Medicaid Program that
9 was available --

10 THE COURT: Any objection?

11 MR. EISER: No objection.

12 THE COURT: Admitted without objection. And that's
13 Exhibit 2?

14 MR. GREENBERG: Yes, Your Honor. Plaintiff's
15 Exhibit 2. Can we go off the record for one minute to confer
16 with co-counsel, and I think I might be done.

17 (Counsel conferring.)

18 MR. GREENBERG: I was told that the clock was still
19 running during this?

20 THE COURT: It's still running, yes.

21 MR. GREENBERG: Okay. Nothing further at this time
22 for Ms. Lating.

23 THE COURT: All right.

24 Any additional questions by the defense?

25 MR. EISER: Just briefly. I'd like to lay the

1 foundation for Your Honor on Exhibit 71.

2 **THE COURT:** Go ahead.

3 - - -

4 **CROSS-EXAMINATION**

5 - - -

6 **BY MR. EISER:**

7 **Q.** Ms. Lating, I'm showing you what we've marked as Defense
8 Exhibit 71. Can you describe what this is. And did you
9 prepare what we marked as Defense Exhibit 71?

10 **A.** Yes, I did.

11 **Q.** How and when?

12 **A.** 2014, on or about -- I can't see the date, but it was
13 September 2014, and it was a telephone interview.

14 **Q.** Your screen is not working?

15 **A.** I can't see the whole thing, it's cut off -- I can't see
16 the bottom to see the date that I -- so September 8, 2014. I
17 interviewed Dr. Harris.

18 **Q.** And why was that?

19 **A.** We had received information that Dr. Harris was conversing
20 with Mr. Annappareddy about --

21 **MR. GREENBERG:** I'm going to object to this
22 document -- this line of questioning and move to strike, Your
23 Honor. I think this is the very issue that Your Honor, I
24 believe, said he was going to -- Your Honor, was going to rule
25 on later.

1 **THE COURT:** Let's stop. Let's just talk about it
2 right now. I think I misspoke earlier.

3 When we were talking about this Harris interview record.
4 And when I asked about was it admissible, I said we'll look at
5 the hearsay exception in 803(21). It says there's an exception
6 for reputation containing character. That gets you past the
7 hearsay problem.

8 But I pointed out you have to read these rules together.
9 And we go back to 404(a), which says ordinarily evidence of a
10 person's character is not admissible that on a particular
11 occasion he acted in conformity with that character. But there
12 are exceptions, and one of the exceptions is 803(a)(3) [sic],
13 exceptions for a witness. Evidence of a witness's character
14 may be admitted under Rules 607, 08 and 09.

15 So we go over to 608(a), and it tells us that a witness's
16 credibility may be attacked or supported by testimony that the
17 witness's reputation for having character of truthfulness or
18 untruthfulness by testimony in the form of an opinion. And so
19 you put all of those together, if Mr. Annappareddy takes the
20 stand, his credibility or his truthfulness is at play.

21 The Harris statement is an out-of-court statement, so it's
22 hearsay. But 803(21) provides a hearsay exception. So I think
23 it will come in eventually, assuming the Plaintiff [sic] takes
24 the stand.

25 So that's my just tendered ruling. You-all can look at

1 these rulings and shoot me down if I'm wrong. But you need to
2 look at 803(21), 404(a)(3), and 608(a). Those are the rules I
3 just cited.

4 **MR. GREENBERG:** Thank you, Your Honor.

5 **THE COURT:** So I think down the road, if
6 Mr. Annappareddy takes the stand, the Harris affidavit or the
7 Harris interview statement is probably going to come in.

8 **MR. GREENBERG:** I don't think it's possible to know
9 that until Your Honor hears what Mr. Annappareddy says on the
10 stand.

11 **THE COURT:** Anytime he takes the stand, his character
12 for truthfulness is brought into play. It's an issue. And the
13 combination of these three rules says that the Harris affidavit
14 will come. That's my tentative conclusion. You-all can look
15 at it over the weekend, and maybe convince me that I'm wrong.
16 But I just wanted you to know how it seems to me at this time.

17 So back to the objection, state the objection again.

18 **MR. GREENBERG:** I guess -- well, one objection is this
19 is outside the scope of the questions I just asked. It's -- I
20 mean, this is like a new direct examination.

21 **THE COURT:** What about that, Mr. Eiser? I think you
22 are supposed to be limited to what Mr. Greenberg brought out in
23 his most recent round of questioning.

24 **MR. EISER:** Yes, Your Honor. What we've been talking
25 about is whether this could be admissible, and you just gave us

1 some rules that would possibly make it admissible. But there's
2 an additional one, and that is the Government records
3 exception, which is what has been used to allow all of these
4 reports, and I don't see anything different about this on the
5 issue of damages.

6 **THE COURT:** Mr. Greenberg, what's the objection again,
7 now?

8 **MR. GREENBERG:** Well, I'm now pointing out this is
9 clearly outside the scope --

10 **THE COURT:** Mr. Eiser, you didn't answer my question.
11 Is this not outside the scope of what Mr. Greenberg went into
12 in his most recent round of questioning?

13 **MR. EISER:** I don't believe he did, but this was
14 raised yesterday, and I was stopped to lay the foundation that
15 it's a Government record.

16 **THE COURT:** All right. I have the authority to relax
17 the rule on the scope of redirect or the scope of recross,
18 whichever one. I'm going to allow it for this limited instance
19 for just a brief line of questioning, and then we're going to
20 move on.

21 **MR. GREENBERG:** Your Honor, I'll just make one more
22 objection. Under Federal Rules of Evidence 403, this is -- we
23 don't think this has any probative value because it's not
24 relevant to probable cause or malice.

25 **THE COURT:** Are we talking about the Harris statement?

1 **MR. GREENBERG:** The hearsay statement, yes.

2 **THE COURT:** Well, it has some probative value because
3 Mr. Harris gives an opinion on the trustworthiness or the
4 believability of a key player in this controversy. It's got to
5 have some relevance.

6 **MR. GREENBERG:** Well, but there's an issue of -- I
7 mean, there's a lot of issues here. Actually, it's not just
8 hearsay, it's double hearsay. It's Ms. Lating reading from a
9 document she prepared --

10 **THE COURT:** It's a public record. That's the first
11 level.

12 The second level is what Mr. Harris said about
13 Mr. Annappareddy, and 803(21), the hearsay exception for
14 character, says it can be written hearsay, out-of-court
15 statement. So . . .

16 **MR. GREENBERG:** Respectfully, Your Honor, we may have
17 discussed this before, but this is not a public record within
18 the meaning of the rule.

19 **THE COURT:** Her report --

20 **MR. GREENBERG:** Agent's 302s are not public records.
21 They're certainly not prepared by a public agency for
22 dissemination to the public. They're certainly not prepared --

23 **THE COURT:** That's not what the public record rule
24 says. It doesn't have to be disseminated to the public.

25 Public record, 803(8), a record or statement of a public

1 office if it sets out the office's activities on a manner
2 observed while under a legal duty to report.

3 **MR. GREENBERG:** Yes, Your Honor. That's a public
4 office. For example, OPR, that might be, you know, a public
5 office because it's the office. Here, it's an individual
6 agent. As far as I'm aware, courts have consistently held that
7 it's legal error to rule that an individual agent's 302 is a
8 public record. It's not.

9 **THE COURT:** Well, I think that's through criminal
10 cases. Let's just take this under advisement. I don't want to
11 make a misstep here. You say -- let's just hit the books over
12 the weekend, and come back Monday prepared to tell me whether
13 this is -- this is a 302, right?

14 **MR. EISER:** Yes, Your Honor.

15 **THE COURT:** Whether a 302 is somehow excluded from the
16 definition of a public record to the hearsay exceptions.

17 **MR. GREENBERG:** Yes, Your Honor.

18 And just one more point on this, I mean, you made the
19 point that there's an exception only for criminal cases, but
20 this was prepared during a criminal case.

21 **THE COURT:** I know, but this is a civil case we're
22 trying here. So, I mean, I really would like to go slow on
23 this and not make a mistake.

24 Mr. Eiser, I know you don't want to bring her back on
25 Monday.

1 **MR. EISER:** I'm going to ask her three questions,
2 whether it's kept in --

3 **THE COURT:** Whether I let it in or keep it out, I
4 think we should go ahead and ask these questions. If I decide
5 to keep it out, I will not consider these questions or these
6 answers. That's the fairest I think I can -- I don't want to
7 bring this witness back. Isn't she living in Florida or
8 somewhere now?

9 **MR. GREENBERG:** I think she's local. I mean, I think
10 the more cautious course would be to figure out what the law is
11 on this, and see if we want to bring Ms. Lating back.

12 **THE COURT:** Well, I been around the block a few times.
13 If I decide it's not admissible, I'm not going to go consider
14 it. I give you my word; if I later determine that you're
15 right, I will not give weight to these three questions that
16 Mr. Eiser asks.

17 **MR. GREENBERG:** Okay. Thank you, Your Honor.

18 **THE COURT:** All right. Go ahead.

19 **BY MR. EISER:**

20 **Q.** Is what we marked as Defense Exhibit 71 your report of
21 your interview with Mr. Harris?

22 **A.** Yes.

23 **Q.** And is that -- are you under an obligation to complete a
24 report when you do an interview in the course of an
25 investigation?

1 A. Yes.

2 Q. Have you accurately summarized in this report what
3 Mr. Harris told you?

4 A. Yes.

5 MR. GREENBERG: Objection to the leading question,
6 sir.

7 THE COURT: Overruled.

8 BY MR. EISER:

9 Q. Is this report maintained in your office -- or when you
10 worked at the FBI, was maintained in the office in the ordinary
11 course of business?

12 A. Yes. In the case file.

13 MR. EISER: That's all on that.

14 THE COURT: All right. Well, we're just going to
15 bookmark that. If I decide it does not come in, I will not
16 consider those responses I just heard.

17 MR. EISER: Thank you.

18 THE COURT: Let me just ask, is this Mr. Harris not
19 available? I mean, 803 exceptions don't require
20 unavailability. But I'm just curious, is he not in this area?

21 MR. EISER: I'm afraid I don't know.

22 THE COURT: Anything further, Mr. Eiser, with this
23 witness?

24 MR. EISER: No. Thank you, Your Honor.

25 THE COURT: Mr. Greenberg?

1 **MR. GREENBERG:** I think we're done.

2 **THE COURT:** Thank you very much. You're excused.

3 **THE WITNESS:** Thank you, Your Honor.

4 (Witness exits.)

5 **THE COURT:** Next witness, please.

6 **MR. FLOWERS:** Thank you, Your Honor.

7 Mr. Annappareddy, calls Special Agent Mosley.

8 And also, Your Honor, I don't know what we can do now, but
9 that was a pretty very lengthy discussion about whether the
10 public record applies, and I'm wondering if --

11 **MR. MILLER:** The clock was stopped during that
12 discussion.

13 **MR. FLOWERS:** Very well. Thank you.

14 (Witness enters.)

15 (Witness sworn.)

16 **THE CLERK:** You may be seated in the witness box.

17 Sir, for the record, could you please state and spell your
18 first and last name.

19 **THE WITNESS:** Yes. My name is Robert Mosley,
20 M-O-S-L-E-Y.

21 **THE CLERK:** Thank you.

22 - - -

23 **DIRECT EXAMINATION**

24 - - -

25 **BY MR. FLOWERS:**

1 Q. Good morning Mr. Mosley.

2 A. Good morning, sir. How are you?

3 Q. Very well. Very well.

4 My name is Kobie Flowers. I represent Mr. Reddy
5 Annappareddy. I'm going to be asking you some questions today.

6 A. Yes.

7 Q. First line of questions, Mr. Mosley, I'm going to ask you
8 is just about your background. And I want you to focus on
9 2013, and what you were doing then.

10 In 2013, Mr. Mosley, you were an agent with the Department
11 of Health and Human Services?

12 A. That's correct, sir.

13 Q. You, at that point, had been an agent with the Department
14 of Health and Human Services for about 28 years?

15 A. No, sir. I became an agent in 1995.

16 Q. All right. So 1995.

17 A. So that's about 18 years.

18 Q. About 18 years. Okay.

19 And as a agent with the Department of Health and Human
20 Services for about 18 years, you specialized in healthcare
21 fraud investigations.

22 A. That's correct, sir.

23 Q. You were trained at the Federal Law Enforcement Center.

24 A. Yes, sir.

25 Q. You were trained how to complete comprehensive

1 investigations at the Federal Law Enforcement Center.

2 A. That's correct, sir.

3 Q. You did that training out in Georgia.

4 A. That's correct.

5 Q. That's a training -- that's a center, rather, that trains
6 agents all over the federal government.

7 A. That's correct.

8 Q. You also took healthcare fraud training conferences
9 throughout your career back in 2013, correct?

10 A. Yes, correct.

11 Q. As a healthcare fraud investigator, back in 2013, you had
12 been the primary agent on investigations.

13 A. Yes, sir.

14 Q. As a healthcare fraud investigator, back in 2013, you also
15 had been the support agent.

16 A. Yes, sir.

17 Q. Back in 2013, as a agent investigating fraud
18 investigations, you had significant experience.

19 A. Yes, sir.

20 Q. As an agent, back in 2013, working on healthcare
21 investigations, you knew how to interview witnesses.

22 A. Yes, sir.

23 Q. You knew how to assess a witness's credibility.

24 A. Yes, sir.

25 Q. You knew that one way to assess a witness's credibility is

1 to match what the witness is saying versus the documents you
2 had obtained in the investigation.

3 A. That's correct, sir.

4 Q. You knew that another way to evaluate a witness's
5 credibility was to match what the witness is saying, versus
6 what other witnesses in the investigation have said.

7 A. That's correct, sir.

8 Q. You knew to evaluate a witness's credibility, back in
9 2013, you could look at what the witnesses said versus the
10 physical evidence in the case, right?

11 A. That's correct.

12 Q. You also, Special Agent Mosley, knew that if you're going
13 evaluate a witness's credibility, you also have to take into
14 account common sense.

15 A. Yes, sir.

16 Q. Special Agent Mosley, back in 2013, on July 23rd, 2013,
17 you testified in front of the federal grand jury.

18 A. That's correct, sir.

19 Q. You testified in front of a federal grand jury about the
20 Pharmacare investigation.

21 A. That's correct.

22 Q. When you testified in front of that federal grand jury on
23 July 23rd, 2013, you used an affidavit as an outline.

24 A. Yes, sir.

25 Q. The affidavit you used as an outline was signed by FBI

1 Special Agent Laura [sic] Lating.

2 A. Maura Lating.

3 Q. Maura Lating. Thank you.

4 A. Yes, sir.

5 Q. That affidavit was your roadmap when you were in the
6 federal grand jury on July 23rd, 2013.

7 A. Correct, sir.

8 Q. You read from that affidavit when you were in the federal
9 grand jury on July 23rd, 2013, correct?

10 A. Yes, sir.

11 Q. When you were in the grand jury on July 23rd, 2013, you
12 presented information primarily from that affidavit.

13 A. Yes, sir.

14 Q. You did not present any information -- let's put it this
15 way.

16 Reddy Annappareddy did not present information to that
17 grand jury, correct?

18 A. No, he did not.

19 Q. You knew, on July 23rd, 2013, after having presented your
20 information to the grand jury, that an indictment was to be
21 asked for by the prosecutor.

22 A. That's correct.

23 Q. You knew that when you were in front of that grand jury,
24 that you would not be cross-examined by anybody representing
25 Reddy Annappareddy.

1 A. That's correct.

2 Q. You knew, when you were in front of that grand jury, that
3 your work would not be questioned by anything that Reddy
4 Annappareddy had said.

5 A. That's correct.

6 Q. You knew that Reddy Annappareddy's side or position on
7 your investigation was not going to be heard in that grand jury
8 on July 23rd, 2013.

9 A. That's correct.

10 Q. Mr. Mosley, I now want to turn your attention to the
11 reports you reviewed as part of the Pharmacare investigation.

12 You're familiar with an investigator by the name of Laurie
13 Gutberlet?

14 A. Yes.

15 Q. You reviewed many of the reports created by Laurie
16 Gutberlet?

17 A. Yes, sir.

18 Q. Those reports were about various witnesses in the
19 Pharmacare investigation?

20 A. Yes, sir.

21 Q. Those reports concerned a Dennis Tokofsky?

22 A. Yes, sir.

23 Q. Those reports concerned a Lisa Ridolfi?

24 A. Yes, sir.

25 Q. Those reports concerned other witnesses in the case,

1 correct?

2 A. Correct?

3 Q. Before the grand jury on July 23rd, 2013, you spoke about
4 a term called a Med-4. M-E-D-4. Do you recall that testimony,
5 sir?

6 A. I recall the term Med-4s.

7 Q. Do you recall that the term Med-4s generally applied to
8 HIV medication?

9 A. Yes, sir.

10 Q. You recall that the Pharmacare investigation was centered
11 around HIV medications?

12 A. Yes, it was.

13 Q. These Med-4s were the center of the Pharmacare
14 investigation?

15 A. Yes. As well as other drugs.

16 Q. I didn't mean to cut you off, sir.

17 A. As well as other drugs, not just the HIV drugs.

18 Q. Fair to say that the HIV drugs, however, were the more
19 expensive drugs?

20 A. That's correct, sir.

21 Q. Fair to say that the most expensive drug was a drug called
22 Atripla.

23 A. Yes, sir.

24 Q. Another very expensive HIV drug was a drug called Truvada.

25 A. Yes, sir.

1 Q. And a third HIV drug that was very expensive and part of
2 the Pharmacare investigation was called Kaletra.

3 A. Yes, sir.

4 Q. And you knew this and told this to the grand jury on
5 September 23rd, 2013.

6 A. Yes, sir.

7 Q. Agent Mosley, I now want to turn your attention to a
8 witness in the Pharmacare investigation, a man by the name of
9 Dennis Tokofsky. Do you recall that witness, sir?

10 A. Yes, sir.

11 Q. Do you recall that witness as a relator in the Pharmacare
12 investigation?

13 A. Yes, sir.

14 Q. You understand that a relator is a whistleblower in a
15 Medicaid fraud investigation?

16 A. Yes, I am.

17 Q. You understand that, as an agent with the Department of
18 Health and Human Services, a whistleblower stands to benefit
19 financially if there is a proven loss to the government?

20 A. Yes, sir.

21 Q. You understood Dennis Tokofsky to have once worked for
22 Mr. Annappareddy.

23 A. That's correct.

24 Q. You knew that Dennis Tokofsky filed a *qui tam* complaint in
25 this case.

1 A. Yes, I do.

2 Q. You knew that Dennis Tokofsky filed that *qui tam* complaint
3 before you went to the federal grand jury to testify.

4 A. Yes, sir.

5 Q. You did not tell the federal grand jury about that *qui tam*
6 complaint?

7 A. During the grand jury testimony?

8 Q. Yes, sir.

9 A. I can't recall, sir. Whether I specifically talked about
10 the relator and what he had advised or information that he
11 provided, I can't recall exactly if I spoke about Mr. Tokofsky.

12 Q. As you sit here today, June 2nd, 2023, you have no
13 recollection of whether you told the federal grand jury about
14 the relator, Dennis Tokofsky?

15 A. No recollection specifically about Dennis Tokofsky.

16 Q. Your testimony today then, is that you did not --

17 A. I can't recall. That's my testimony today. I cannot
18 recall.

19 Q. Would looking at your grand jury transcript perhaps
20 refresh your recollection?

21 A. Yes, it will.

22 Q. Very well. I'm going to show you what's been marked, and
23 I believe admitted into this case, as Plaintiff's Exhibit 71.

24 Mr. Mosley, do you recognize the first page of Plaintiff's
25 Exhibit 71 as the cover page of your testimony in front of the

1 federal grand jury on July 23rd, 2013?

2 A. Yes, sir.

3 Q. In preparation of your testimony today, Mr. Mosley, have
4 you had occasion to review your federal grand jury?

5 A. Yes, sir.

6 MR. FLOWERS: If we could move to the second page of
7 the exhibit. Thank you.

8 BY MR. FLOWERS:

9 Q. Mr. Mosley, you recognize on the second page your name is
10 there?

11 A. Yes, sir.

12 Q. Do you see that underneath your name, there is a heading
13 that says "Examination"?

14 A. Yes, sir.

15 Q. And then there is the person with the name of
16 Ms. Wilkinson there?

17 A. Yes, sir.

18 Q. You recognize that as your grand jury testimony?

19 A. Yes, sir.

20 Q. All right. What you can do is, you've got a copy,
21 Mr. Mosley, of your grand jury testimony, if you look in the
22 black notebook there, that does not have a label on it. If you
23 look at the first page there, it should say "Plaintiff Reddy
24 Vijay Annappareddy's Amended Trial List."

25 Do you see that?

1 A. Yes, sir.

2 Q. All right. If you just tab over to 71, you will find your
3 grand jury testimony, the same grand jury testimony that
4 appears on the Court's screen here. Why don't you look through
5 there and see if you testified, if that refreshes your
6 recollection about whether you testified that Dennis Tokofsky
7 was a whistleblower in the Pharmacare investigation.

8 MR. PHELPS: Is Mr. Flowers asking him to review all
9 70-plus pages? I mean, we can point him to the pages.

10 THE WITNESS: Can you specifically give me a page?

11 BY MR. FLOWERS:

12 Q. Again, if it refreshes your recollection, then I'll ask
13 you questions about it. If it doesn't refresh your
14 recollection, just say so, and I'll move on to something else.

15 A. Are you talking about a specific page or information?

16 Q. Let me give you some direction. The only thing I'm asking
17 you --

18 A. Yes, sir.

19 Q. -- is whether you recall, sitting here today, about
20 testifying in front of the federal grand jury about the
21 whistleblower Dennis Tokofsky and if looking at Plaintiff's
22 Exhibit 71 will refresh your recollection, since you testified
23 that you couldn't remember. So just take a minute. You can
24 look through that. If it refreshes your recollection, then
25 I'll ask you questions. If it doesn't refresh your

1 recollection, I'll ask you other questions.

2 A. This is my testimony in the grand jury, that's correct.

3 Q. Does that refresh your recollection about what you may or
4 may not have said about Dennis Tokofsky?

5 A. I think I'm a little confused. If you're talking
6 specifically about testimony regarding Dennis Tokofsky, if you
7 can reference as to where in the grand jury testimony I spoke
8 of --

9 Q. Again, you reviewed the testimony. This is not a -- kind
10 of a trick question --

11 A. Okay.

12 Q. -- or a quiz.

13 If you remember, just say so, I'll ask you questions about
14 it. If you don't remember, Agent Mosley, say you don't
15 remember.

16 A. Yes, I remember. This is my grand jury testimony, yes,
17 sir.

18 Q. Do you remember testifying in your grand jury testimony
19 about Dennis Tokofsky, the whistleblower in this case?

20 A. I don't see Dennis Tokofsky in the testimony that I have
21 before me without you giving me a reference as to where in the
22 testimony.

23 Q. I understand.

24 A. You understand --

25 Q. I understand. All I'm trying to do is see if you remember

1 whether you said anything about --

2 A. I do not remember whether I said anything about Dennis
3 Tokofsky, that's correct.

4 Q. We'll move on then, Agent Mosley.

5 Let me just be clear, you're still an agent?

6 A. No, I'm not.

7 Q. What is your current employ?

8 A. Retired.

9 Q. All right. You're a retired agent?

10 A. Yes, I am.

11 Q. Okay if I call you Mr. Mosley, then?

12 A. Yes.

13 Q. All right. Mr. Mosley, you're aware that Dennis Tokofsky
14 spoke to your investigative team back in June of 2012, and
15 stated that approximately 70 percent of the prescriptions at
16 Pharmacare are never received. Do you recall Dennis Tokofsky
17 saying that back in June 19th, 2012?

18 A. I remember that.

19 Q. You also -- did you have occasion to review Dennis
20 Tokofsky's *qui tam* complaint?

21 A. No, I didn't.

22 Q. All right. You're aware that in Dennis Tokofsky *qui tam*
23 complaint, he indicated that 90 percent of the medications in
24 Pharmacare were not turned over; are you aware of that?

25 A. I'm not aware of that. If you can show me that, I'm not

1 aware of it.

2 Q. All right. Let me show you what's marked as Government's
3 Exhibit 7.

4 Actually, before I do that, let me lay a better foundation
5 here and be crystal clear about this.

6 Your testimony today, Mr. Mosley, is that you knew he
7 filed a *qui tam* complaint and said that 70 percent of the
8 medications were not returned, regarding Pharmacare?

9 A. Well, actually, sir, can you show me that? I do not
10 recall that.

11 Q. Yes. I'll refresh your recollection, then. We'll go
12 through the same process here. I'm going to show you what's
13 been marked and admitted into evidence as Plaintiff's
14 Exhibit 13. And I'm going to direct you to Page 9 at
15 Paragraph 28. And if you look there at the -- kind of middle
16 of the screen, do you see the words there that says "In
17 relator's experience at Pharmacare, approximately 70 percent of
18 the prescriptions are never picked up"?

19 A. Yes, I see that, sir. Yes.

20 Q. Does that refresh your recollection that back in 2012, the
21 whistleblower in this case indicated in his *qui tam* complaint
22 that 70 percent of the prescriptions were not picked up?

23 A. Yes, sir.

24 Q. All right. Now I want to ask you about a meeting you had
25 with the relator in August of 2012.

1 So before I ask you about that, let me do it this way.

2 You recognize that this *qui tam* complaint was filed in
3 June of 2012.

4 A. Yes, sir.

5 Q. All right. June of 2012 was before you went to the grand
6 jury in July of 2013.

7 A. That's correct, sir.

8 Q. I now want to turn your attention to a meeting that you
9 had with Dennis Tokofsky in August of 2012. So two months
10 after Dennis Tokofsky filed his complaint, you had a meeting
11 with Dennis Tokofsky and your team. Do you recall that
12 meeting, sir?

13 A. I recall meeting with Mr. Tokofsky. I'm not sure of
14 dates.

15 Q. Okay. Do you recall meeting with Mr. Tokofsky in August
16 of 2012, and in that meeting, he said 90 percent of the drugs
17 were not filled or returned?

18 A. I do not recall. You have to show me that, sir.

19 Q. Very well. Let me direct you to Government's Exhibit 7.
20 Government's Exhibit 7, Mr. Mosley -- ah, he put it up on the
21 screen there.

22 Do you see Government's Exhibit 7 there, sir?

23 A. Yes, sir.

24 Q. All right. Do you see at the top of Government's
25 Exhibit 7, there's a subject line that says "Meeting with

1 Relator Dennis Tokofsky"?

2 A. Yes, sir.

3 Q. All right. And do you see that if you pull down on that
4 first page, the people that were there at that meeting, there's
5 a list?

6 A. Yes, sir.

7 Q. And do you see at the bottom of the list, on the
8 right-hand side, you're listed there?

9 A. Yes, sir.

10 Q. Do you see above your name, Dennis Tokofsky's name is
11 listed there?

12 A. Yes, sir.

13 Q. Do you see over to the left of Dennis Tokofsky, a man by
14 the name of Royston Delaney is listed there?

15 A. Yes, sir.

16 Q. And he was Dennis Tokofsky's lawyer?

17 A. Yes, sir.

18 Q. All right. And let me direct your attention, Special
19 Agent Mosley, to Page 5. And I want to direct your attention,
20 Special Agent Mosley, to the very last sentence on Page 5 where
21 it reads, "These prescriptions were dated, and approximately
22 90 percent of them were never reversed with Medicaid."

23 Do you see that?

24 A. Yes, I see that. Yes, sir.

25 Q. Having seen Plaintiff's Exhibit -- or rather, Government's

1 Exhibit 7, is your memory refreshed about having a meeting with
2 Dennis Tokofsky on August 23rd, 2012?

3 A. Yes, sir.

4 Q. Do you recall Dennis Tokofsky telling you at that meeting
5 that 90 percent of the prescriptions were never reversed with
6 Medicaid?

7 A. As I see here, yes, sir.

8 Q. Dennis Tokofsky said in his *qui tam* complaint 70 percent
9 of the prescriptions were not returned --

10 A. Yes.

11 Q. Do you recall that testimony?

12 A. Yes --

13 MR. PHELPS: Objection, Your Honor. Mischaracterizes
14 the statement in the *qui tam*.

15 THE COURT: Hold on a second.

16 What's the objection?

17 MR. PHELPS: It mischaracterizes the statement in the
18 *qui tam*. Mr. Flowers said that the 70-percent number
19 referenced in *qui tam* were, quote, "not reversed." That's not
20 what the *qui tam* said. The *qui tam* said not picked up.

21 THE COURT: You can explore that when you have the
22 witness.

23 I'll overrule the objection for now.

24 MR. FLOWERS: Thank you, Your Honor. And I want to
25 see if I can respond to the objection by asking Special

1 Agent Mosley this.

2 **BY MR. FLOWERS:**

3 **Q.** In this investigation that you conducted back in
4 September '13 -- or back in July 2013, when you testified, the
5 investigation that you were involved in went back to 2012, in
6 that Pharmacare investigation, you were looking at whether
7 Mr. Annappareddy was taking money from Medicaid, correct?

8 **A.** Medicaid and various other insurances. Not just Medicaid.

9 **Q.** One way that you take money from Medicaid and various
10 other insurances, is that you bill for the medication and you
11 don't give the medication to the patient, right?

12 **A.** That's correct, that's correct.

13 **Q.** One way you're able to take money from Medicaid and
14 various other insurances, is that you bill for the medication,
15 the patient doesn't pick up the medication, and then you don't
16 reverse that billing or reimburse Medicaid; is that fair to
17 say?

18 **A.** That's fair to say.

19 **Q.** All right. When Dennis Tokofsky says here on Government's
20 Exhibit 7 that 90 percent of the prescriptions or medications
21 were never reversed, you see that as, as an investigator, that
22 that's money that is being taken from Medicaid; is that
23 correct?

24 **A.** That's correct.

25 **Q.** All right. On August of 2012, Dennis Tokofsky said money

1 is being taken from Medicaid at a rate of 90 percent; fair to
2 say?

3 A. Yes.

4 Q. All right. Now, I want to go back to the *qui tam*, right,
5 in which you testified that 70 percent -- or rather, you
6 testified that Dennis Tokofsky filed a *qui tam* in which
7 70 percent of the prescriptions were not received. Do you
8 recall that testimony?

9 A. Yes. Would you just show me?

10 Q. Yes.

11 A. Yes. Yes, sir.

12 Q. It's fair to say that the 70 percent that was not being
13 paid back to Medicaid in the *qui tam* is similar to the
14 90 percent, as far as -- of kind. In other words, money is not
15 being paid back to Medicaid. In one instance, Mr. Tokofsky
16 says it's 70 percent, correct?

17 A. Correct.

18 Q. In another instance, he says it's 90 percent, correct?

19 A. Correct.

20 Q. And the first instance, when he says it was 70 percent,
21 that was part of the *qui tam* complaint, correct?

22 A. Correct.

23 Q. He said that in June of 2012, correct?

24 A. That's correct.

25 Q. And then, two months later, in August of 2012, in front of

1 you, he says it was 90 percent, correct?

2 A. Correct.

3 Q. On July 23rd, 2013, you still don't recall whether you
4 told that to the federal grand jury, correct?

5 A. I do not recall that, sir.

6 Q. Mr. Mosley, I now want to direct your attention to your
7 investigation of the logs in this case. You recall,
8 Mr. Mosley, that one way you can determine whether medication
9 is given to a patient is by looking at the signature logs.

10 A. Yes, sir.

11 Q. You understand another way that you can determine whether
12 a medication is given to a patient is looking at the delivery
13 logs.

14 A. Yes, sir.

15 Q. You knew, back in 2012, that Pharmacare had had signature
16 logs.

17 A. Yes, sir.

18 Q. You also knew that Pharmacare had delivery logs.

19 A. Yes, sir.

20 Q. You knew that Lisa Ridolfi, at Plumtree, had access to
21 those logs.

22 A. Yes, sir.

23 Q. You never asked Lisa Ridolfi for those logs.

24 A. No, I did not.

25 Q. I now want to ask you some questions, Mr. Mosley, about a

1 14-day window for reversals.

2 You recall, Mr. Mosley, the affidavit that you read to the
3 grand jury on July 23rd, 2013, had various drafts.

4 A. Yes, sir.

5 Q. You recall in one of those drafts, Mr. Mosley, you were
6 tasked with running to ground whether there was a 14-day window
7 for reversals.

8 A. Yes, sir.

9 Q. You recall that there was also an email in February of
10 2013 indicating that that was, again, your job, was to run this
11 14-day rule to task or to ground. Do you recall that, sir?

12 A. Yes, sir.

13 Q. You determined that there was no 14-day rule as a law in
14 effect back in September 2013, correct?

15 A. Yes, sir.

16 Q. You did not tell that to the grand jury, correct?

17 A. I don't recall telling that to the grand jury, sir.

18 Q. Mr. Mosley, I want to ask you some questions about a
19 government contractor by the name of MEDIC, M-E-D-I-C.

20 A. Yes, sir.

21 Q. You understand that MEDIC works with people like yourself
22 when you're investigating Medicaid fraud.

23 A. Yes, sir.

24 Q. You see MEDIC as an expert in helping people like yourself
25 investigate Medicaid fraud.

1 A. Yes, sir.

2 Q. When you were investigating the alleged fraud dealing with
3 Pharmacare, you were the point person between MEDIC -- that's,
4 again, M-E-D-I-C -- and the federal investigative team.

5 A. Yes, I was.

6 Q. When I say "point person," you were the person that gave
7 information to MEDIC so that they can run their analysis,
8 correct?

9 A. That's correct, sir.

10 Q. You were the only person -- you were the lead person to
11 give information to MEDIC, correct?

12 A. Yes, sir.

13 Q. Mr. Mosley, I want to ask you some questions about
14 transfers. But before we talk about transfers, let me just be
15 clear here.

16 In 2013, there was no law that required reversals in
17 14 days, correct?

18 A. Correct, sir.

19 Q. When you went before the federal grand jury on July 2013,
20 there was no law requiring a 14-day reversal, correct?

21 A. That's correct.

22 Q. You knew, when you went before the federal grand jury on
23 July 2013, that Dennis Tokofsky had told you that medications
24 had to be reversed in 14 days.

25 A. I don't recall that, sir.

1 Q. Your reason for investigating the 14-day rule was because
2 someone had told you that the 14-day rule applied to
3 Pharmacare, correct?

4 A. I can't recall if it was Dennis who told me that.

5 Q. All right. I didn't mean to cut you off.

6 A. I can't recall if it was Dennis who told me that, or if
7 that was something I did on my own, a part of the team, to see
8 whether or not the 14 days was a standard or a law or
9 regulation as to when the drugs had to be reversed.

10 Q. And your motivation then, for looking into that 14-day
11 rule, was had that rule existed, that would suggest to you that
12 there was some fraud going on at Pharmacare if the medications
13 were not reversed within 14 days; is that fair to say?

14 A. That's fair to say.

15 Q. It's fair to say that you looked into that 14-day rule,
16 and you found that there was no law about the 14-day rule that
17 would have required Pharmacare to return medications within
18 14 days?

19 A. There was no rule or law, correct.

20 Q. I now want to direct your attention, Mr. Mosley, to the
21 subject of transfers of inventory.

22 You recall learning, Mr. Mosley, that Pharmacare
23 transferred inventory from one pharmacy to another pharmacy?

24 A. That's what I was told, sir.

25 Q. All right. And you understood the transferring of

1 medication from one pharmacy to another pharmacy to be
2 perfectly legal, correct?

3 A. Yes.

4 Q. You understood that when you're trying to calculate how
5 much medication or how much inventory medication exists, you
6 need to account for that transfer, correct?

7 A. Yes.

8 Q. You understand that when you have one pharmacy that
9 perhaps has three medications, another pharmacy that perhaps
10 has another three medications, if you add up the medications
11 between those two pharmacies, you have six medications,
12 correct?

13 A. Yes, sir.

14 Q. You understand that when you have one pharmacy with three
15 medications, another pharmacy, pharmacy B, with two
16 medications, and pharmacy A transfers medication over to
17 pharmacy B, so that now pharmacy B has three medications and
18 pharmacy A has two medications, you have five medications
19 total, correct?

20 A. That's correct.

21 Q. You understand that when you're calculating loss, you have
22 to add up the medications, correct?

23 A. Correct.

24 Q. You understand that when calculating loss, if you do not
25 account for transfer of medication between one pharmacy to

1 another pharmacy, your loss figure could be higher.

2 A. Yes.

3 Q. You understand, Special Agent Mosley, the loss figure that
4 was in the Maura Lating affidavit was approximately
5 2.6 million. Do you recall that, sir?

6 A. I believe that was -- sounds about right, sir.

7 Q. All right. And that about 2.6 million did not account for
8 transfers, correct?

9 A. I believe it should have accounted for transfers.

10 Q. Your testimony is that it did account for transfers?

11 A. It should have because we were looking at the inventory,
12 what was actually purchased. So we went to the wholesalers to
13 see exactly what was purchased by Pharmacare, so that would
14 have given us the number of drugs, the amount of drugs that was
15 purchased at all the pharmacies that we were looking at, all
16 Pharmacare pharmacies. So it should have accounted for that.

17 Q. All right. I'm going to show you what has been marked for
18 identification purposes as Plaintiff's Exhibit 42.

19 A. This is 43, sir.

20 Q. Yeah, 42.

21 A. I'm looking at 43.

22 Okay. Plaintiff's Exhibit 42.

23 Q. Plaintiff's Exhibit 42. I'm sorry, Mr. Mosley.

24 A. Okay.

25 Q. All right. And I want to direct your attention to the

1 first page there of Plaintiff's Exhibit 42. You see there
2 there's an email from Jeremy Dykes, you see that email there on
3 Friday, May 17th, 2013?

4 A. Yes, sir.

5 Q. And you recall Jeremy Dykes as being one of the lawyers on
6 the investigation team?

7 A. Yes, sir.

8 Q. Right?

9 And you see the subject line there in that email is
10 "In-and-out Analysis"?

11 A. Yes, sir.

12 Q. And do you see in that email that you are in the "To:"
13 line?

14 A. Yes, sir.

15 Q. Do you recall receiving this email and being informed by
16 this email that you had -- that when you did the transfers,
17 that the number was much lower, the loss number was much lower?

18 A. I'm not seeing that here.

19 Q. All right.

20 A. Much lower than what? Or what are you referencing to?

21 Q. Let's do it this way. Attached to this -- let's do it
22 this way.

23 A. Okay.

24 Q. Couple steps.

25 You see up above there, that this email was then forwarded

1 by Pam Arnold?

2 A. Yes, sir.

3 Q. All right. And you see it was forwarded to Maura Lating?

4 A. Yes, sir.

5 Q. And you see that Pam Arnold said, "This is not what we
6 hoped for"?

7 A. Yes, sir.

8 Q. Does that refresh your recollection as to what happened
9 there?

10 MR. PHELPS: Objection, Your Honor. This document is
11 obviously in evidence, but Mr. Mosley did not receive this
12 email, the top email.

13 THE COURT: This exhibit is already in.

14 MR. PHELPS: He can't refresh his recollection with an
15 email he never saw.

16 MR. FLOWERS: It's already in evidence, number one.

17 Number two, we're talking about the loss number. Because
18 he gave testimony, right --

19 THE COURT: I'll overrule the objection. Go ahead.
20 It's not his document. He's copied on it.

21 MR. FLOWERS: That's right.

22 BY MR. FLOWERS:

23 Q. Mr. Mosley, does this refresh your recollection that when
24 the in-and-out analysis, or the transfer analysis, was done,
25 the loss number was much lower than what you had hoped for as a

1 team?

2 A. No. That's not what I -- what I hoped for, no. That's
3 not the case here with me. Because I didn't write this.

4 Q. Right. No, I understand you didn't write it.

5 A. Okay.

6 Q. The question, Mr. Mosley, is: When this information was
7 discovered, the transfer information was discovered, you agree
8 that it was lower than what had been expected once you account
9 for transfers?

10 A. I can't say, sir.

11 Q. Well, let me see if I can refresh your recollection.

12 Do you recognize the spreadsheet that's part of
13 Plaintiff's Exhibit 42 there?

14 A. Yes, sir.

15 Q. And that spreadsheet goes ahead and calculates the loss
16 with respect to Pharmacare, correct?

17 A. That's correct.

18 Q. And if you turn to the next page there, where it says, all
19 the way at the bottom -- and now I'm on, again, Plaintiff's
20 Exhibit 42. I'm on the ECF No. 3.

21 Do you see where it says "Grand Total" there?

22 A. Yes, sir.

23 Q. All right. And you see when you go all the way across to
24 "Grand Total," you see a number, about 1.3 million?

25 A. Yes.

1 **MR. PHELPS:** Objection, Your Honor, regarding the
2 characterization of this. These are pills, not dollars.

3 **THE COURT:** All right.

4 Do you want to correct that?

5 **MR. FLOWERS:** Yes. Court's indulgence.

6 **BY MR. FLOWERS:**

7 **Q.** Mr. Mosley, you're 100 percent correct that these are
8 pills, not dollars.

9 You're also correct, though, that when you account for
10 transfers, the loss number comes down, correct?

11 **A.** How is that?

12 **Q.** Well, as we've talked about, right --

13 **A.** Okay.

14 **Q.** -- if you have two pharmacies, and you do not account for
15 transfers, right, you can double-count or you can count more
16 medication than is actually there, right?

17 **A.** Well, when we're looking at the actual drugs itself, we
18 would have accounted for the inventory, right, for this
19 pharmacy, as well as that pharmacy.

20 **Q.** Right.

21 **A.** So the inventory is still the same; the amount of drugs is
22 still the same. What was actually purchased is still the same.

23 **Q.** Right.

24 **A.** Right. So how -- that would have been accounted for.

25 **Q.** Right. But if you did not account for the transfer,

1 however, right, then what you could do is misunderstand the
2 loss. Do you understand what I'm saying there? Is that clear?

3 A. No, it's not clear.

4 Q. All right. Well, you did an in-and-out analysis -- or
5 Jeremy Dykes had an in-and-out analysis done, correct?

6 A. Well, actually, it was done by -- looked like the MEDIC
7 did the in-and-out analysis.

8 Q. And MEDIC is doing the in-and-out analysis, and they're
9 trying to account for transfers, correct?

10 A. Yes. They account for all of the information that was
11 provided to them --

12 Q. Right.

13 A. -- from the wholesalers. So everything that was
14 purchased, all of the drugs that were purchased, regardless of
15 what store, would have been accounted for.

16 Q. Right. And we are accounting for all of the purchases --

17 A. Correct.

18 Q. -- and the in-and-out analysis looks at transfers,
19 correct?

20 A. Correct.

21 Q. I want to ask you, Mr. Mosley, about the MADAP claims.

22 You understand that MADAP is the Maryland AIDS Drug Assistance
23 Program?

24 A. That's correct, sir.

25 Q. You understand that MADAP is a secondary payor?

1 A. Yes, sir.

2 Q. And you understand the difference between a secondary
3 payor and a primary payor, is that a secondary payor, right,
4 will not pay for the entire medication like a primary payor
5 can.

6 A. That's correct, sir.

7 Q. You understand that the MADAP program centered around HIV
8 medications.

9 A. That's correct.

10 Q. You understand, and you already testified, that the HIV
11 medications were the most expensive medications with respect to
12 Pharmacare.

13 A. That's correct.

14 Q. Now, with respect to MADAP you, again, have to be careful
15 when you're counting up medications when you're trying to
16 figure out who paid for the medication; is that fair to say?

17 A. Can you repeat that?

18 Q. That's not a good question.

19 When you have medication, medication is just paid for by
20 one payor, that's easy to figure out who paid for that one
21 medication if there's just one payor, correct?

22 A. That's correct.

23 Q. When you have medication and the medication is paid by a
24 primary payor and a secondary payor, you have to account for
25 two payors paying for that one medication, correct?

1 A. Yes. Still the one medication, it's just two sources of
2 payments.

3 Q. Exactly.

4 A. 80 percent, 20 percent.

5 Q. Exactly. And you, as the key person between the
6 investigative team and MEDIC, M-E-D-I-C --

7 A. Yes, sir.

8 Q. -- did not tell them about the potential that there could
9 be MADAP paying for medication and a primary payor paying for
10 the same medication.

11 A. No, I did not tell them that.

12 Q. You understand, Mr. Mosley, that MADAP, not having that
13 information, runs a risk of them counting MADAP -- let me ask
14 the question a little bit more clear, not only for you, but
15 also for the record.

16 You understand that MEDIC, when they're trying to figure
17 out who paid for a medication, it was important for them to
18 know that for some medications, there were two payors; and for
19 other medications, there was just one payor.

20 A. That's important to know, but that wasn't my
21 responsibility to go to the MEDIC and tell the MEDIC that,
22 "Hey, MADAP is the secondary payor, and Medicare and Medicaid
23 is the primary payor." The MEDIC is well -- they are experts
24 in doing these in-and-out analyses. So they would have known
25 that. So this wasn't my responsibility to do so, sir.

1 Q. Do you recall having a discussion -- or rather, an email
2 exchange between you and Lori Gillin about this issue?

3 A. Without you showing me that, sir --

4 Q. All right. Let me see if I can refresh your recollection.
5 And I'm going to direct your attention, Mr. Mosley, to
6 Plaintiff's Exhibit 33. And again, you're going to look in the
7 book that doesn't have any cover on it.

8 Are you there, sir?

9 A. Yes, I am.

10 Q. Okay. And you can look on the screen, or you can look at
11 the exhibit.

12 Lori Gillin is someone who worked for MEDIC, correct?

13 A. That's correct, sir.

14 Q. The email is from Lori Gillin on Plaintiff's Exhibit 33,
15 correct?

16 A. Correct, sir.

17 Q. And that email is written to you, correct?

18 A. Yes, sir.

19 Q. And it was sent to you on April the 25th, 2013, correct?

20 A. Yes, sir.

21 Q. And in the middle of that email, Lori Gillin tells you,
22 "As previously discussed, we" -- that is, MEDIC -- "are not
23 comfortable or qualified to manipulate any datasets other than
24 Medicare Part D."

25 Do you see that language there, sir?

1 A. Yes, that's correct.

2 Q. You understand then that MEDIC was not qualified to look
3 at the MADAP information and deduplicate it.

4 A. That's correct, sir.

5 Q. I now -- one last question on this MADAP issue here,
6 Mr. Mosley.

7 MEDIC told you that they could not deduplicate; that is,
8 take out the MADAP, M-A-D-A-P, information from the primary
9 payor information. You knew that on or about April 25th, 2013,
10 correct?

11 MR. PHELPS: Objection. Mischaracterizes the email.

12 THE WITNESS: I think this email refers to --

13 THE COURT: Overruled.

14 Go ahead.

15 THE WITNESS: -- MCO, sir, not MADAP.

16 BY MR. FLOWERS:

17 Q. Right.

18 A. This looks like it says "Maryland MCO data," so we're not
19 talking about the MADAP in here.

20 Q. Well, the MADAP, right, they're not able to do the MADAP
21 data. That's not what they're able to do here, right?

22 A. It doesn't say that there.

23 Q. When it says "As previously discussed, we're not
24 comfortable or qualified to manipulate any datasets. . . "

25 A. In reference to MCOs. Right? This email looks like it

1 references MCOs and not MADAP, according to the heading and
2 also the language in the body of the email.

3 Q. All right.

4 Mr. Mosley, do you recall telling MEDIC that, in fact,
5 MADAP was an MCO?

6 A. No, sir.

7 Q. Let me direct you then to Plaintiff's Exhibit 45, see if
8 that refreshes your recollection that you told MEDIC MADAP was
9 an MCO.

10 You see this email that you sent on May 29th, 2013?

11 A. Yes, I see it.

12 Q. Do you see that email was sent to Robin Sroka?

13 A. Yes.

14 MR. FLOWERS: And it's S-R-O-K-A, for the court
15 reporter.

16 BY MR. FLOWERS:

17 Q. Robin Sroka works for MEDIC?

18 A. Yes, sir.

19 Q. Do you see where you wrote at point 3: "Was the MADAP
20 Maryland MCO included in all of the Maryland facilities"?

21 A. Yes, I wrote that.

22 Q. Do you see, Mr. Mosley, where you told MEDIC that MADAP
23 was an MCO?

24 A. And I think here I was referencing whether MADAP and the
25 MCOs were included in the Maryland billings. As far as I can

1 recall, sir.

2 Q. Well, your email that you wrote doesn't say "and"?

3 A. Okay. That's correct.

4 Q. You agree it says, "Was the MADAP" -- in parentheses --
5 "(Maryland MCO) included in all the Maryland facilities?"

6 You agree; that's what your email says?

7 A. That's what the email says, correct, sir.

8 Q. You agree that Ms. Sroka could read that email and
9 reasonably determine that you're saying MADAP is an MCO?

10 A. Yes, I can see that.

11 Q. All right. I want to ask you a few questions, Mr. Mosley,
12 about a letter you received from MEDIC back on May 9th of 2013.

13 Do you recall MEDIC telling you that its information did
14 not reflect the impact to the Government; that is, the loss to
15 the Government?

16 A. Can I see that, sir?

17 Q. Yes. Let me direct your attention, again, to the
18 Plaintiff's notebook, Plaintiff's Exhibit 40.

19 All right. Do you see at Plaintiff's Exhibit 40 there --

20 A. Yes, sir.

21 Q. -- the date of May 9, 2013?

22 A. Yes, sir.

23 Q. Do you see under that date it says "SA," for Special
24 Agent, "Robert Mosley"?

25 A. Yes, sir.

1 Q. Do you see, if we jump all the way to the end of the
2 letter, that the letter is signed by Robin Sroka?

3 A. Yes, sir.

4 Q. The same Robin Sroka you had emailed?

5 A. Yes, sir.

6 Q. And Robin Sroka is a data analysis, correct?

7 A. Analyst.

8 Q. Analyst. Thank you for the correction.

9 And as a data analyst, Robin Sroka indicates, if you look
10 further up on the exhibit, Plaintiff's Exhibit 40 there, you
11 see -- if you come back down to the paragraph that starts with
12 "The information."

13 Do you see that paragraph there, sir?

14 A. Yes, sir.

15 Q. Do you see where Robin Sroka is explaining to you, quote,
16 "The information provided represents the data associated with
17 your request" -- here's the key language, Mr. Mosley -- "and
18 did not represent the impact to the government."

19 A. Yes, I see this.

20 Q. Do you see that?

21 A. Yes.

22 Q. You agree that Robin Sroka is telling you that the
23 information is providing you, as an investigator of Pharmacare,
24 is not information that goes to the -- again, the impact to the
25 government, right?

1 A. You know, I don't know what she was referencing here when
2 she -- when she wrote "does not represent the impact of the
3 government." I really can't speak for why she would have wrote
4 that or what -- the reason for that.

5 Q. When you -- I'm sorry, I don't mean to cut you off.

6 A. I don't understand why she wrote that.

7 Q. You don't understand why she wrote that?

8 A. That it doesn't impact the government.

9 Q. All right. Let's see if I can, perhaps, clarify your
10 understanding if we just read a little further.

11 A. Okay.

12 Q. She instructs, that "Once you've reviewed the data" --
13 that's the MEDIC data -- "and ascertained what PDE records
14 support your case, you may determine that a calculation of
15 estimated impact" -- there's that word again -- "to the
16 government is necessary."

17 Do you see that?

18 A. Okay. Yes, I see that.

19 Q. Your testimony still is that impact to the government does
20 not mean loss; that's your testimony?

21 MR. PHELPS: Objection.

22 THE WITNESS: No, that's not my testimony, sir.

23 That's definitely not my testimony.

24 BY MR. FLOWERS:

25 Q. Your testimony is you're not sure what "impact to the

1 government" means, correct?

2 A. That's correct. Because there was definitely an impact to
3 the government; that's for sure.

4 Q. And you are for sure that MEDIC is saying, "Don't use our
5 information to make that calculation."

6 A. Not at all. They're not saying that in this here. If
7 anything, that last sentence saying are "supporting records" or
8 maybe "supporting documentation," but they are in no way saying
9 that, not to use their information, the in-and-out analysis,
10 for the loss of the government or the impact to the government.
11 That is not what they're saying, sir.

12 Q. Let me walk through your answer a little bit.

13 A. Okay.

14 Q. You just said they're not to use your information or the
15 impact or the loss to the government; was that your testimony?

16 A. Listen, can you ask the question again, sir?

17 (Reporter read back as requested.)

18 **BY MR. FLOWERS:**

19 Q. Let me ask the question.

20 A. Yes, sir.

21 Q. You understand that you just said that impact and loss are
22 the same thing in your previous answer?

23 A. There's an impact and loss, yes, correct.

24 Q. Your testimony was that you didn't understand what "impact
25 to the government meant"; do you recall that testimony?

1 A. Yes. When you read the first sentence of this paragraph,
2 when it said, "Your request does not represent the impact to
3 the government," right. As we went further on, it indicates
4 here, "Once you've reviewed the data and maybe provide
5 supporting doc -- records to support your case, then we can
6 determine a calculation as to the damages or the impact to the
7 government." So is that saying that we need supporting
8 documentation, additional records, but it's not saying it
9 doesn't impact.

10 Q. You agree that the word "impact," as Robin Sroka wrote to
11 you back in May of 2013, means loss.

12 A. Yes.

13 Q. And you agree that Robin Sroka says that the information
14 that she was providing you back in May of 2013 does not
15 represent loss to the government.

16 A. There was an impact to the government, representing loss
17 to the government.

18 Q. My question is a little bit different.

19 A. Okay.

20 Q. Do you agree that in Plaintiff's Exhibit 40, "impact to
21 the government" is analogous to the word "loss"?

22 A. Yes, sir.

23 MR. PHELPS: If we're changing topics, Your Honor, I
24 could use a restroom break.

25 THE COURT: Good time to break. Let's take a

1 15-minute recess. We'll reconvene in exactly 15 minutes.

2 **MR. FLOWERS:** Your Honor, if you don't mind just
3 reminding the witness he's not to speak --

4 **THE COURT:** Mr. Mosley, don't discuss your testimony
5 with anyone during the break.

6 **THE WITNESS:** Yes, sir. I understand.

7 **THE CLERK:** All rise. This Honorable Court is now in
8 recess.

9 (Whereupon, a recess was taken from 11:27 a.m. to
10 11:45 a.m.)

11 **THE CLERK:** All rise. This Honorable Court resumes in
12 session.

13 **MR. FLOWERS:** Judge, I know you mentioned earlier we
14 don't have to ask permission to approach the witness --

15 **THE COURT:** You don't have to. It's a custom in the
16 profession, but I've never heard a judge denying the request.

17 **MR. FLOWERS:** I just want to make sure. Because it is
18 a custom, and I didn't want to violate the custom in Your
19 Honor's courtroom.

20 **BY MR. FLOWERS:**

21 **Q.** All right. Mr. Mosley, let's go back to this transfer
22 issue, again, okay. I don't think I wasn't as clear as I can
23 be.

24 You understand, Mr. Mosley, that in order to get an
25 accurate accounting of the inventory in a chain of pharmacies,

1 you have to account for transfers.

2 A. Yes, sir.

3 Q. Okay. I already showed you, and let's put back on the
4 screen Plaintiff's Exhibit 42. Again, Plaintiff's Exhibit 42
5 is this email from the lawyer, Jeremy Dykes, to the team. And
6 the subject of the email is "In-and-out Analysis."

7 Do you see that, sir?

8 A. Yes, sir.

9 Q. We can agree that in-and-out analysis is another way of
10 saying transfers?

11 A. Well, in-and-out analysis is another way of saying
12 inventory reconciliation. That's the proper name for it.

13 Q. All right.

14 A. Basically, what's in stock versus what's been billed.
15 Just that simple.

16 Q. Right. So inventory reconciliation --

17 A. Yes, sir.

18 Q. -- what's in stock versus what's been billed, you have to
19 look at transfers from one store to another store; is that fair
20 to say? To figure out what's in stock and what's been billed?

21 A. Yes. I mean, because, actually, they look at all of the
22 stores. So if I reach out to a wholesaler, and I request
23 information on Pharmacare, they will send me what was actually
24 purchased by Pharmacare, regardless of which of the stores.
25 All Pharmacare inventory, drugs that were purchased.

1 Q. Right.

2 A. Okay.

3 Q. Okay.

4 A. Not a breakdown of -- just all of the drugs that were
5 purchased by Pharmacare.

6 Q. Right.

7 A. Whether it was transferred or not.

8 Q. Okay. So what I want to do then, is look at Plaintiff's
9 Exhibit 42 --

10 A. Okay.

11 Q. -- where Jeremy Dykes does his in-and-out analysis. And I
12 want to explain to everyone kind of how the in-and-out analysis
13 works.

14 So you take, for example, Atripla on Plaintiff's
15 Exhibit 42, Page 2.

16 A. Okay.

17 Q. At line 90.

18 MR. FLOWERS: Can we highlight that for everyone.
19 Perfect.

20 BY MR. FLOWERS:

21 Q. Atripla, you've already testified, is an HIV drug,
22 correct?

23 A. That's correct. That's correct.

24 Q. If we just page over to Pharmacare and Atripla, which is
25 going to be on Page 6 of 25. So, Mr. Mosley, you're a federal

1 agent here. You know how ECF works. You see where the
2 ECF pagination is on the left-hand side of the page in blue?

3 A. Let me --

4 Q. Yeah, it's on the top. There we go. Here's what we're
5 going to do.

6 Do you see it on the screen?

7 A. Page 6 of 25?

8 Q. Yes, Page 6 of 25.

9 A. Yes.

10 Q. Okay. Then what I want you to do is simply go down to
11 line 83 through -- exactly -- 89, all right. You and I can
12 agree that line 38 to line 89 is the Atripla medications for
13 Pharmacare?

14 A. Okay. Was that Atripla -- I'm just saying 38 to -- yes,
15 it is.

16 Q. Do you see that?

17 A. That was Atripla. Yes, sir.

18 Q. Okay. Now, if you -- so that's all of the Atripla
19 medication.

20 And then if we move over on the spreadsheet to the next
21 page, all right. So you see just -- if you jump over to the
22 next page, and just look at the same rows, 83 to 89 -- because
23 that's Atripla for Pharmacare, right?

24 A. Yes.

25 Q. Okay. You go all the way across for 83, for example, and

1 you see a shortage of 74.

2 Do you see that?

3 A. Yes.

4 Q. But then if you go down to the next row, 84, you see a
5 surplus of 2,790.

6 A. Yes.

7 Q. Then the next row, you see a shortage of 210, right?

8 A. Yes.

9 Q. Then you get to 86, you tell me what you see there,
10 Mr. Mosley.

11 A. 13,343.

12 Q. Fair to say that that's a surplus?

13 A. Yes.

14 Q. Then you see zero.

15 And then at line 88, you see 1,170, right?

16 A. Yes, sir.

17 Q. Okay. Line 90, you agree, Mr. Mosley, is adding up the
18 inventory for Plumtree for this medication, Atripla.

19 Do we agree with that?

20 A. Yes, sir.

21 Q. And line 90 ends up with a surplus, correct?

22 A. Yes.

23 Q. And you agree that when you're trying to deal with an
24 inventory and then attach a dollar sign to that inventory, you
25 have to do what we just did, which is account for the

1 transfers, right?

2 A. Yes.

3 Q. Okay. I now want to direct your attention Special
4 Agent -- or rather, former Special Agent Mosley, retired
5 Special Agent Mosley, to Plaintiff's Exhibit 47.

6 Are you there, sir?

7 A. Yes.

8 Q. You see, for Plaintiff's Exhibit 47, we have one of the
9 lawyers on the case writing an email to you and others,
10 Michael DiPietro.

11 Do you see that?

12 A. Yes.

13 Q. You see he writes that email a little over 10 years ago,
14 31st of May, 2013.

15 Do you see that, sir?

16 A. Yes, sir.

17 Q. And you see you're on the "To:" line, "Robert Mosley"?

18 A. Yes, sir.

19 Q. And you see in the email, Mr. DiPietro says that,
20 "Attached is a review of the experts' work, thus far." Then he
21 says, and this is what's important, "If there is" -- quote --
22 "no movement of meds between locations, the loss is about 2.4
23 for the 76 products that the experts examined."

24 Do you see that language? Did I read that correctly, sir?

25 A. Yes, that's correct.

1 Q. All right. When you read that language from the lawyer,
2 Michael DiPietro -- now a judge, I understand -- when he says
3 "no movement of meds between locations," that means no
4 transfers, correct?

5 A. I would assume so, sir.

6 Q. All right. And he also -- as you can see, there's
7 attachments to this email, right? And what he's attaching is
8 the summary of the expert review.

9 Do you see that there, sir?

10 A. Yes.

11 Q. Okay. Now what I want you to do is look at the
12 attachment. So just page over to the column, and it's going to
13 have a ECF pagination of 3 of 11. I want you to look at the
14 column there for the estimated loss.

15 A. Yes, sir.

16 Q. You see what Mr. DiPietro did was he sent to the team the
17 estimated loss for the Pharmacare investigation if there is, as
18 he says, no movement of meds between locations, and as you say,
19 no transfers. And you see that that loss there is 2,672,068.

20 Do you see that, sir?

21 A. Yes, sir.

22 Q. You agree that that's a loss if we don't have any
23 transfers, right?

24 A. I would assume so, sir.

25 Q. Do you have reason to doubt that number?

1 A. I'm not sure about -- this is -- first of all, this is
2 from not Michael DiPietro, but from the MEDIC.

3 Q. Right.

4 A. So the MEDIC did the summary here.

5 Q. Right.

6 A. So assuming that the MEDIC included any of the transfers
7 from store to store.

8 Q. Right.

9 My question is different.

10 A. Okay.

11 Q. My question is: Looking at Plaintiff's Exhibit 47 --

12 A. Okay.

13 Q. -- you have an email from one of your colleagues, one of
14 the lawyers on the team, correct?

15 A. Correct.

16 Q. Michael DiPietro, right?

17 A. Correct.

18 Q. And Michael DiPietro says I'm sending everybody the loss
19 numbers if, assuming that there's, quote, "no movement of meds
20 between locations." You agree about that, right?

21 A. Yes, yes, that actually was stated.

22 Q. When he sends everyone, including yourself --

23 A. Yes, sir.

24 Q. -- that loss number, that loss number comes up to
25 2,672,068. Do you agree with that, sir?

1 A. Yes, sir.

2 Q. All right. Now, I want to direct your attention to the
3 Lating affidavit that you testified about in the grand jury.
4 That's at Plaintiff's Exhibit 70. And I want to direct your
5 attention to Page 9 of Plaintiff's Exhibit -- I'm sorry,
6 Page 9, which is the actual page number, not the ECF page
7 number. Okay?

8 Before we move on Special Agent -- or rather, former
9 Special Agent Mosley, do you see Plaintiff's Exhibit 70 there?

10 A. Yes.

11 Q. That's the affidavit, correct?

12 A. Yes, sir.

13 Q. That's the affidavit that you testified in front of the
14 federal grand jury on July 23rd, 2013, correct?

15 A. That's correct.

16 Q. Right. And in that affidavit on Page 9, and in
17 Paragraph 15, near the end, do you see the loss number for
18 Pharmacare being 2,672,067.

19 Do you see that, sir?

20 A. Yes, I see that.

21 Q. All right. I think we're going to go ahead and highlight
22 for you so everyone can see it. There we go.

23 Do you see that there, Mr. Mosley?

24 A. Yes, sir.

25 Q. All right. Now, you recognize that that loss number is

1 the same loss number that Michael DiPietro sent you back on
2 May 31, 2013, correct?

3 A. Yes, sir.

4 Q. Now, just to be clear, it's \$1 off, right? You see
5 that -- Michael DiPietro -- if you were to page back to
6 Plaintiff's Exhibit 47, you're going to see that it's
7 \$2,672,068.

8 Do you see that, sir?

9 A. Yes, sir.

10 Q. And then if you look over -- there we go.

11 MR. FLOWERS: Can we highlight that. All right.

12 BY MR. FLOWERS:

13 Q. So that \$2,672,068, that's what you testified Michael
14 DiPietro calculated when, as he said, there's no movement of
15 meds between stores, correct?

16 A. Okay. I just want to make a correction. Actually, this
17 came from the MEDIC. So it's the in-and-out analysis. So
18 Michael DiPietro, Judge Mike DiPietro, didn't do this analysis
19 on his own. So this analysis was done by the MEDIC.

20 Q. Okay.

21 A. So -- and the MEDIC's analysis, the transfers could have
22 been included in the numbers here that we're looking at for the
23 various stores.

24 Q. Okay.

25 A. Because, once again, I say once the inventory, you're

1 getting the inventory from Pharmacare, as a whole.

2 Q. You understand that -- again, just so we're clear --

3 A. Okay.

4 Q. -- Michael DiPietro is sending analysis from your
5 testimony from MEDIC, right? We're on the same page there?

6 A. It appears that is from MEDIC.

7 Q. Right.

8 A. It wouldn't be Mike -- it doesn't appear to be Mike
9 DiPietro's. I would have to see. But it looks like it's a
10 summary from the MEDIC. I just want to make sure of that. I
11 wanted to see an email. Because it said summary of -- so it
12 looked like it was something that could have been done by the
13 MEDIC.

14 Q. Again, it seems like you're confused, and I don't want you
15 to be.

16 A. Well, basically, because you're not giving me the whole
17 picture here. I want to see the email -- let me see the email
18 again from Mike.

19 Q. Just jump back to Plaintiff's Exhibit 47.

20 A. Okay.

21 Q. And we'll show you that.

22 Do you see Plaintiff's Exhibit 47 there on the screen?

23 A. Okay. It's a review of the experts' work.

24 Q. Yeah.

25 A. So that's saying that it came from the MEDIC.

1 Q. Exactly.

2 A. Okay.

3 Q. And reviewing the experts' work, right, Mike DiPietro
4 says, if there is -- these are his words, right, not the
5 experts' words, right?

6 A. That's correct.

7 Q. He says "if there is no movement between locations" --

8 A. Correct.

9 Q. -- he actually says the loss is about 2.4, which, I think,
10 he means 2.4 million; you and I agree on that?

11 A. Yeah, that's correct.

12 Q. Okay. And then looking at that same email, there's an
13 attachment. Do you see on the email where it says,
14 "Attachments"?

15 A. Yes.

16 Q. All right. And then that attachment is just -- if you
17 turn the page in Plaintiff's Exhibit 47, and you go all the way
18 down, that's where you get the loss number that Michael
19 DiPietro is referencing, and, as you have said, came from the
20 MEDIC.

21 Do you see that?

22 A. Correct.

23 Q. Okay.

24 A. Okay. So it's saying a review from the experts, saying it
25 was from the MEDIC, so it appears it's from the MEDIC. And he

1 indicated that if there's no movement -- and that's not coming
2 from the expert, but it's coming from Michael DiPietro -- then
3 the number is 2.6.

4 Q. Right.

5 And you testified earlier that in order to figure out
6 loss, you must account for transfers, correct?

7 A. Yes.

8 Q. This number doesn't account for transfers, correct?

9 A. We don't know that. He said "if there's no movement," no
10 transfers. So we can assume that. You're assuming that
11 transfers weren't accounted for.

12 Q. Very well. Very well. We're going to move on. Thank you
13 for your testimony.

14 Let me ask one last follow-up question before we move off
15 this discussion of transfers.

16 Did you tell Michael DiPietro that you have to include
17 transfers?

18 A. No, I did not.

19 Q. Did you tell the grand jury that you have to include
20 transfers?

21 A. I don't recall saying that in the grand jury.

22 Q. You recognize that the number that Michael DiPietro has
23 there at Plaintiff's Exhibit 47 is the same number that is in
24 the Maura Lating affidavit, right?

25 A. Yeah, that's what we saw, right. 2.6 million.

1 Q. It's just off by \$1, correct?

2 A. Okay. Correct.

3 Q. Mr. Mosley, I want to ask you a few more questions. Thank
4 you for explaining transfers to Judge Anderson and myself.

5 Let me ask you -- let me ask you a few questions,
6 Mr. Mosley, about Lisa Ridolfi.

7 You testified earlier today, Mr. Mosley, that you evaluate
8 a witness's credibility. Do you recall your testimony about
9 that, sir?

10 A. Yes, sir.

11 Q. You're aware that before you went into the grand jury,
12 Lisa Ridolfi indicated to you that Mr. Annappareddy places
13 Middle Eastern employees in his pharmacy in order to control
14 who runs the pharmacy. Do you remember her giving you that
15 information? Or giving the team, I should say, that
16 information?

17 A. I don't recall that, sir.

18 Q. All right. Let me direct your attention to Plaintiff's
19 Exhibit 22, and see if we can refresh your recollection. Okay?

20 You see that Plaintiff's Exhibit 22 is a memo from Laurie
21 Gutberlet.

22 Do you see that?

23 A. Yes, sir.

24 Q. You understand Laurie Gutberlet is one of the
25 investigators that you were working with?

1 A. Yes, sir.

2 Q. All right. And the memo has the subject line "Report of
3 Interview."

4 Do you see that?

5 A. Yes, sir.

6 Q. And it's of Pharmacare employee Lisa Ridolfi, right?

7 A. Yes, sir.

8 Q. And you understood Lisa Ridolfi to be a whistleblower; is
9 that fair to say?

10 A. She was not a whistleblower.

11 Q. Well, you understood that she wanted to be a
12 whistleblower.

13 A. I don't think so she wanted --

14 MR. PHELPS: Objection.

15 THE WITNESS: -- to be a whistleblower.

16 BY MR. FLOWERS:

17 Q. Okay. We'll come back to that. Let's deal with the
18 Middle Eastern point first, and then let's come back to what
19 Lisa Ridolfi wanted to be.

20 On Page 2 of Plaintiff's Exhibit 22, all the way down,
21 Mr. Mosley, to the last paragraph.

22 A. Yes, sir.

23 Q. I'm going to read this to you, and let's see if it
24 refreshes your recollection about Lisa Ridolfi and this idea
25 that Middle Eastern people were running the stores at

1 Pharmacare.

2 You see it says, "Within a short time at Pharmacare,
3 Ridolfi became suspect about several in-house practices that
4 are kept 'hushed,' with a degree of secrecy maintained between
5 Annappareddy and primarily two pharmacy technicians of Middle
6 Eastern descent, Jigar Patel and Vipinkumar Patel."

7 Do you see that sentence there?

8 A. Yes, sir, I see it.

9 Q. Does that refresh your recollection --

10 A. Well --

11 Q. Let me ask the question, sir.

12 Does that refresh your recollection that Lisa Ridolfi
13 believed there were Middle Easterners at Pharmacare that were
14 working with Mr. Annappareddy to do things in secret, "hushed,"
15 as the memo here says?

16 A. Well, I'm not familiar with this memo. One thing I did
17 notice, this memo was back in October 2012, before I even got
18 the case. The case didn't come to me until December 2012. So
19 this was prior to me even having the case, sir.

20 Q. All right.

21 A. I wasn't involved in this interview at all.

22 Q. Your testimony today is that you weren't involved in the
23 case until --

24 A. Approximately December of 2012, when I opened the
25 investigation.

1 Q. December of 2012.

2 A. Yes, sir.

3 Q. Okay.

4 A. The case was at the state level at that time, sir.

5 Q. I understand, sir.

6 All right. I'm going to show you what's marked, and
7 already been shown to you, as Government's Exhibit 7.

8 A. Okay.

9 Q. Let's see if we can refresh your recollection as to when
10 you became a part of this case.

11 A. Okay.

12 Q. Look at Government's Exhibit 7. We've already been here
13 earlier today. Do you see the date on that memo?

14 A. Yes.

15 Q. It says "September 5, 2012"?

16 A. Okay.

17 Q. Do you see that the interview actually occurred in
18 August 2012?

19 A. Okay.

20 Q. Fair to say you were working on the case August 2012, not
21 December 2012?

22 A. Fair to say. I just -- my recollection of when I actually
23 opened the case. So yes, it's fair to say September 2012. But
24 I don't recall being at that interview with Lisa in
25 October 2012.

1 Q. Do you recall, Mr. Mosley, testifying, just earlier today,
2 that you reviewed the memos of Laurie Gutberlet?

3 A. Yes.

4 Q. You understand that this is one memo by Laurie Gutberlet.

5 A. That's correct.

6 Q. You understand that this is a memo in which Lisa Ridolfi
7 is claiming that Mr. Annappareddy is working with Middle
8 Eastern people to engage in hushed secret operations?

9 A. Yes.

10 Q. You agree, as an investigator that investigates the
11 credibility of witnesses, such an allegation is something you
12 look into.

13 A. Yes.

14 Q. Such an allegation is important to look into because it
15 goes to the credibility of the witness.

16 A. Okay. Yes.

17 Q. A witness who says that, essentially, there is an ethnic
18 clique engaged in misconduct, that's a witness you're going to
19 pay attention to, as a seasoned investigator, correct?

20 A. Correct.

21 Q. You never told the grand jury about Lisa Ridolfi making
22 this claim that Mr. Annappareddy was working with Middle
23 Easterners to engage in some secret conduct.

24 A. I don't recall saying that in the grand jury at all.

25 Q. You agree that that claim is a serious claim for the

1 credibility of a witness, correct?

2 A. Yes.

3 Q. And you agree when that claim was made, you were working
4 this case.

5 A. Looked like that was in October 2012. Yes, I was not part
6 of that interview of Lisa. Because it doesn't appear that I
7 was there when Lisa made that --

8 Q. I understand you weren't part of that interview.

9 A. Okay. Correct.

10 Q. You understand your testimony earlier today was you read
11 the interview memos completed by Laurie Gutberlet, correct?

12 A. Yes, sir.

13 Q. You understand your testimony earlier today is that when a
14 witness makes an allegation that someone's engaged in some type
15 of an ethnic secret operation, that's a serious allegation,
16 correct?

17 A. Yes.

18 Q. You're an investigator of decades of experience. You know
19 that's a serious allegation, correct?

20 A. Correct.

21 Q. And you didn't take that serious allegation and tell the
22 grand jury on July 23rd, 2013, correct?

23 A. No, I didn't.

24 Q. Now, you mentioned earlier that you didn't believe Lisa
25 Ridolfi is a whistleblower. Do you recall that testimony, sir?

1 A. Yes, sir.

2 Q. You recall reviewing a letter that Lisa Ridolfi wrote to
3 the judge who issued the Lating affidavit in which she said, "I
4 had a question about how to be the whistleblower in the case."
5 Do you recall that letter Lisa Ridolfi wrote?

6 A. Not at all.

7 Q. Let me show you what's marked and, I believe, admitted, as
8 Plaintiff's Exhibit 60.

9 MR. PHELPS: Just a -- I believe it was admitted -- it
10 was admitted as part of a different exhibit. So no objection
11 to it coming in again, but I just wanted the record to be
12 clear.

13 THE COURT: So it's in twice as two different numbers?

14 MR. PHELPS: I believe it's going to come in both as
15 the letter and then both as an attachment to an email that was
16 discussed --

17 THE COURT: All right. Let's just leave it at that
18 then. I understand that.

19 MR. FLOWERS: Very well. Thank you, Your Honor.

20 Thank you, Mr. Phelps.

21 BY MR. FLOWERS:

22 Q. Plaintiff's Exhibit 60, do you see that exhibit there,
23 sir?

24 A. Yes, sir.

25 Q. All right. You see at the top of that exhibit a date,

1 "July 1, 2013"?

2 A. Yes, sir.

3 Q. All right. Do you see that the letter starts off with

4 "Dear Judge Timothy Sullivan"?

5 A. Yes.

6 Q. Now, you may be aware of Judge Sullivan, having practiced

7 here in Maryland --

8 A. Yes.

9 Q. -- he's a magistrate judge; you know that?

10 A. Yes, yes.

11 Q. All right. You also know that he signed off on the Lating

12 affidavit, right?

13 A. That's correct.

14 Q. And he signed off on the Lating affidavit July 23rd, 2013,

15 right?

16 A. Yes.

17 Q. This letter is dated July 1st, 2013, correct?

18 A. Correct.

19 Q. And you see, if we just scroll over to the next page of

20 the letter, that the letter is signed by Lisa Ridolfi.

21 A. Yes.

22 Q. And you've already testified that you went into the grand

23 jury on July 23rd, 2013, correct?

24 **MR. PHELPS:** Objection, Your Honor. I think the

25 question needs to be: "Do you remember the letter?"

1 "No."

2 "Does this refresh your recollection?"

3 If it doesn't, then we need to move on.

4 **MR. FLOWERS:** And I object to the speaking objection,
5 Your Honor. I certainly can lay the foundation that I need to
6 lay.

7 **THE COURT:** Go ahead. Go ahead.

8 **MR. FLOWERS:** Thank you, Your Honor.

9 **BY MR. FLOWERS:**

10 **Q.** Mr. Mosley, you see that this letter is dated July 1st,
11 2013, right?

12 **A.** Yes, sir.

13 **Q.** And you see that this letter came from Lisa Ridolfi,
14 right?

15 **A.** Yes, sir.

16 **Q.** The same Lisa Ridolfi who talked about these Middle
17 Eastern people working at Pharmacare doing something hushed;
18 that's the same Lisa Ridolfi?

19 **A.** Yes.

20 **Q.** And that Lisa Ridolfi wrote to the judge and states --
21 there we go. You see where she states in the very first
22 paragraph, she says, "I had a question about how to be the
23 whistleblower in the case." You see that?

24 **A.** Yes. That doesn't say she is a whistleblower.

25 **Q.** No, it does not, right? It doesn't say that, right?

1 A. It doesn't.

2 Q. It says she has a question about how to be the
3 whistleblower, right?

4 A. Yes.

5 Q. And you understand on July 1st, 2013, Dennis Tokofsky was
6 already a whistleblower, right?

7 A. Yes.

8 Q. He had already filed the *qui tam* complaint, right?

9 A. Yes, sir.

10 Q. And we already talked about that *qui tam* complaint, right?

11 A. Yes.

12 Q. And Lisa Ridolfi knew that Dennis Tokofsky was a
13 whistleblower in the Pharmacare investigation, correct?

14 MR. PHELPS: Objection.

15 THE WITNESS: I'm not certain she knew, sir.

16 THE COURT: He doesn't know.

17 THE WITNESS: I don't know if she knew that Dennis
18 came forward.

19 BY MR. FLOWERS:

20 Q. Very well. You don't know if she knew that, right?

21 A. That's correct, sir.

22 Q. Right.

23 You know -- or let me ask it this way: You don't believe
24 Lisa Ridolfi, back in July of 2013, was trying to be a
25 whistleblower; that's your testimony?

1 A. Can you repeat the question?

2 Q. Yeah, let me repeat the question.

3 You testified earlier that you would not call Lisa Ridolfi
4 a whistleblower; remember that testimony?

5 A. Yes, correct.

6 Q. Then I showed you Plaintiff's Exhibit 60, right?

7 A. Uh-huh.

8 Q. Then you testified that she's asking about how to be the
9 whistleblower; do you recall that testimony, sir?

10 A. Yes.

11 MR. PHELPS: Objection. He didn't testify to that.
12 It's the letter.

13 THE COURT: He just read from the letter.

14 MR. FLOWERS: Right.

15 MR. PHELPS: Right.

16 BY MR. FLOWERS:

17 Q. Does that refresh your recollection --

18 A. Yes, that's correct. And I said she was not a
19 whistleblower.

20 Q. But does that refresh your recollection that she wanted to
21 be a whistleblower?

22 A. Yes, sir.

23 Q. Now that your memory is refreshed that she wanted to be a
24 whistleblower, and you know that she's a person who has said
25 that Mr. Annappareddy is working with Middle Easterners and you

1 said that goes to her credibility, being a whistleblower also
2 goes to her -- or her desire to be a whistleblower goes to her
3 credibility, correct?

4 **MR. PHELPS:** Objection to the form of the question.

5 **THE WITNESS:** Well, actually --

6 **THE COURT:** Overruled. Overruled.

7 Go ahead.

8 **THE WITNESS:** Actually, I'm just -- based on the
9 letter here -- I don't recall seeing this, to be honest with
10 you. But based on what's written here, she was asking about
11 being a whistleblower, how to become a whistleblower. Okay.

12 **BY MR. FLOWERS:**

13 **Q.** And as a healthcare -- a Medicaid fraud investigator of
14 decades of experience, you understand that a person who has a
15 desire to be a whistleblower, you've got to challenge and
16 investigate their credibility; you understand that, right?

17 **A.** Yes, correct. Correct.

18 **Q.** You went into the grand jury not knowing that Lisa Ridolfi
19 had a desire to be the whistleblower, correct?

20 **A.** That's correct.

21 **Q.** And you met with people on your investigative team about
22 the witnesses in this case, correct?

23 **A.** Correct.

24 **Q.** You engaged in investigation yourself in this case,
25 correct?

1 A. Correct.

2 Q. You engaged in surveillance?

3 A. Yes, sir.

4 Q. You engaged in dumpster dives?

5 A. Yes, sir.

6 Q. You engaged in mail covers?

7 A. Yes, sir.

8 Q. You engaged in undercover operations, or at least setting
9 them up?

10 A. My colleagues. But we all, as a team, yes.

11 Q. As a team, right?

12 A. Yes.

13 Q. And in your investigation doing surveillance, correct?

14 A. Yes.

15 Q. Mail covers, correct?

16 A. Yes.

17 Q. Undercover operations, correct?

18 A. Yes.

19 Q. You never learned that Lisa Ridolfi had a desire to be a
20 whistleblower, right?

21 A. That's correct.

22 Q. That's your testimony, right?

23 A. That's correct. This is the first time I'm seeing this
24 letter, sir.

25 Q. All right. And you didn't tell that to the grand jury,

1 that Lisa Ridolfi had a desire to be a whistleblower, correct?

2 A. I never knew that, sir.

3 Q. All right. Now, a few more questions about Ms. Ridolfi,
4 and then I think we might go back to the true whistleblower,
5 Dennis Tokofsky.

6 In your investigation that we now established started back
7 in at least August of 2012, right?

8 A. Yes.

9 Q. It's not what you said, December of 2012, it's August.

10 A. That's -- okay.

11 Q. That's just a fact, right?

12 A. Yeah, yeah, that's correct.

13 Q. I'm not trying to put words in your mouth.

14 A. It's just my recollection, I thought it was towards the
15 end of 2012.

16 Q. Right. But it was --

17 A. Okay.

18 Q. -- August, right?

19 A. Okay.

20 Q. You were there when Lisa Ridolfi was telling Laurie
21 Gutberlet, there are Middle Easterners involved in --

22 A. I wasn't there in that interview, sir.

23 Q. Right. But you had at least reviewed Laurie Gutberlet's
24 memos; you testified about that, right?

25 A. Yes, sir.

1 Q. Back in 2012/2013, you would have been let in on something
2 like that; is that fair to say?

3 A. I don't recall the investigator telling me about that. Is
4 that what you're asking?

5 Q. No, no, no, no. I'm asking, your investigation, that
6 you're trying to be as comprehensive and as accurate as
7 possible, required you to know something like you have a
8 witness who is saying Middle Easterners are involved in some
9 hushed operation.

10 A. Yes, sir.

11 Q. You agree with that, right?

12 A. Yes.

13 Q. You agree that's something that you should have known,
14 right?

15 A. Yes. It would have been nice to know that.

16 Q. And your testimony today is you didn't know that.

17 A. Well, I didn't know that. I didn't know that.

18 Q. Let's see what else you didn't know.

19 You're aware that there were undercover operations at the
20 Pharmacare store in Plumtree, right?

21 A. Yes, sir.

22 Q. You're aware that Lisa Ridolfi worked at Plumtree, right?

23 A. Yes, sir. Was it a Plumtree or Old Emmorton?

24 Q. You're the witness.

25 A. Okay. Okay.

1 Q. You're aware she worked at Plumtree?

2 A. I can't recall if it was Old Emmorton or whether it was
3 Plumtree.

4 Q. All right. I'll see if I can refresh your recollection.

5 Here we go. Let's just jump back in to -- Government's
6 exhibits are going to be in the other binder, 7. Did I say 7?

7 Actually, let me put you in -- I apologize for the confusion.

8 It's actually Plaintiff's Exhibit 22, if you just page
9 over there.

10 If you look at Plaintiff's Exhibit 22, Mr. Mosley. I want
11 to direct your attention to Page 2 of Plaintiff's Exhibit 22.

12 Okay?

13 A. Yes, sir.

14 Q. We're at the very top. Do you see where it says, "Ridolfi
15 is currently employed as a pharmacist with Pharmacare. She
16 works at the 208 Plumtree Road location"?

17 A. Yes, sir.

18 Q. Does that refresh your recollection --

19 A. Yes, sir.

20 Q. -- that Lisa Ridolfi worked at the Plumtree location for
21 Pharmacare?

22 A. Yes, sir.

23 Q. And you recall that Lisa Ridolfi is a white woman?

24 A. Yes, sir.

25 Q. All right. And you're aware that Jigar Patel is not

1 Middle Eastern?

2 A. I thought Jigar is Middle Eastern.

3 Q. And Vipin Patel?

4 A. Is Middle Eastern, yes.

5 Q. You believe they're both Middle Eastern?

6 A. Yes.

7 Q. You don't believe that they are Indian?

8 A. Oh, I'm sorry. They both are Indian.

9 Q. You understand that Lisa Ridolfi was at the Plumtree store
10 with two people that are Indian that she called Middle Eastern?

11 A. Yes.

12 Q. All right. Now recognizing and having your memory
13 refreshed that Lisa Ridolfi actually worked at Plumtree, I want
14 to ask you some questions about her undercover operations at
15 Plumtree. Do you recall those, sir?

16 A. Yes, I did. But for the most part, my colleague with the
17 state -- with the Medicaid Fraud Control Unit was pretty much
18 in contact with Lisa Ridolfi. And I didn't have as much
19 contact with Lisa.

20 Q. Your colleague -- I didn't mean to cut you off, sir.

21 A. Yeah, my colleague Pam Arnold was actually pretty much
22 hands-on with Lisa. So I wasn't as hands-on and had much
23 contact with Lisa, when it came to the undercover operation.

24 Q. Your testimony still is, though, that when a witness in a
25 Medicare fraud investigation says that there is an ethnic --

1 she says Middle Eastern kind of clique engaged in secret -- she
2 says hushed activity, that that was a serious concern for you,
3 right?

4 A. Yes.

5 Q. And you understand that -- you understand that Lisa, while
6 working there at Plumtree, was working with two men who were
7 not Middle Eastern, but were actually Indian.

8 A. Yes, sir.

9 Q. Now, we've already established that that undercuts the
10 credibility of Lisa Ridolfi -- or is that something you would
11 have to investigate, correct?

12 MR. PHELPS: Objection.

13 THE WITNESS: I wouldn't say her credibility --

14 THE COURT: Wait. What's the basis?

15 MR. PHELPS: States facts not in evidence.

16 Mr. Flowers just said it undermined somebody's credibility.

17 THE COURT: Well, it is cross-examination of an
18 adverse witness. I'll allow it. And I understand it's
19 counsel's characterization, but I'll let the witness answer it
20 any way he wants to.

21 Go ahead.

22 BY MR. FLOWERS:

23 Q. All right. Back in 2012, Lisa Ridolfi was engaged in
24 undercover operations at Plumtree, and your testimony, if I
25 follow it, Mr. Mosley, is that she was working with your

1 colleague Pam Arnold in those undercover operations, correct?

2 A. That's correct.

3 Q. You're aware that those undercover operations had her wear
4 a wire or recording device?

5 A. That's correct.

6 Q. You're aware that with that wire or recording device, she
7 was trying to get incriminating information on
8 Mr. Annappareddy.

9 A. Yes, sir.

10 Q. You're aware that that wire recording device did not
11 undercover any incriminating information on Mr. Annappareddy.

12 A. I'm not aware of that.

13 Q. As the investigator who went before the grand jury, you
14 didn't think it important to find out what happened with an
15 undercover operation?

16 A. Well, you just asked whether or not it did not incriminate
17 information, and I beg to differ.

18 Q. What was the incriminate --

19 A. Well, I can't -- I can't recall, but I think it was some
20 information that we did get from the undercover operation.

21 Q. All right. You, under oath today, are saying there was
22 information -- I want to be very, very careful about this.

23 There was information that incriminated Mr. Reddy Annappareddy
24 in Medicaid fraud that Lisa Ridolfi was able to capture on her
25 wire?

1 A. Well, I don't know without -- I mean, you're talking 2012,
2 sir. I can't recall exactly what information we received from
3 our undercover operation. But you're saying that there was
4 nothing, information that we received from the undercover
5 operation, that helped to benefit us during the investigation?

6 Q. I want to be clear --

7 A. You said "incriminate."

8 Q. I want to be clear.

9 A. Okay.

10 Q. I'm not the one who's giving evidence today. That only
11 come from the witness stand, that only comes from you.

12 A. Okay.

13 Q. I'm simply asking questions.

14 A. Okay.

15 Q. My question to you, Mr. Mosley, is: I understand your
16 testimony to be that you don't remember?

17 A. I can't recall, back in 2012, what information we received
18 from Lisa Ridolfi. You're asking me that like it was last
19 month. I don't know what information that we received during
20 the undercover operation without referencing something, looking
21 at something.

22 Q. Right.

23 A. Okay.

24 Q. You understand, as a seasoned agent, that wearing a
25 recording device is a very aggressive investigative technique;

1 you know that, right?

2 A. Correct.

3 Q. You know that in the state of Maryland, nonconsensual
4 recording of somebody is a crime? That's how serious it is in
5 Maryland.

6 A. Yes, yes.

7 Q. And as the investigator, as one of the key investigators
8 on this case, your testimony today is you can't remember --

9 A. I --

10 Q. -- let me finish -- you can't remember what happened when
11 Lisa Ridolfi wore a recording device and tried to record
12 Mr. Annappareddy. That's your testimony today, correct?

13 A. Yes, it is.

14 Q. You don't remember?

15 MR. PHELPS: Objection, asked and answered.

16 THE COURT: You've asked him that three times. He
17 says he doesn't remember.

18 MR. FLOWERS: Well, I'm just trying to actually have a
19 summation question here, and then we can probably break for
20 lunch, Your Honor, if that's okay.

21 THE COURT: Go ahead. Go ahead and finish.

22 BY MR. FLOWERS:

23 Q. Let's just end right here, Mr. Mosley, with you were not
24 aware that Lisa Ridolfi had a desire to be a whistleblower,
25 correct?

1 A. I did not, sir.

2 Q. You were not aware that Lisa Ridolfi was calling Indian
3 people "Middle Eastern" people, correct?

4 A. Correct.

5 Q. You were not aware that Lisa Ridolfi -- or you don't know
6 what information was recovered from Lisa Ridolfi when she wore
7 a recording device to try to get incriminating information
8 against Reddy Annappareddy, correct?

9 A. I don't recall it. That's correct, sir.

10 Q. And with that information, you went before the federal
11 grand jury -- with that lack of information, I should say, you
12 went before the federal grand jury on July 23rd, 2013.

13 MR. PHELPS: Objection, mischaracterizes the
14 testimony.

15 THE WITNESS: I don't recall --

16 THE COURT: Hold on one second.

17 What's the objection?

18 MR. PHELPS: It mischaracterizes his testimony. He
19 says he doesn't remember something, and then he said he went to
20 the grand jury with a lack of information.

21 THE COURT: I think that's a fair objection. That's
22 not what he said. He didn't say he went with a lack of
23 information. That's a matter for argument of counsel later.

24 MR. FLOWERS: Very well, Your Honor.

25 THE WITNESS: I don't recall right now. You're asking

1 me something that happened in 2012.

2 When I went before the grand jury, of course I knew -- I
3 had more information back then, in 2013, when I went before the
4 grand jury. I don't recall, as I'm sitting here right now,
5 testifying before the Court.

6 **BY MR. FLOWERS:**

7 **Q.** You testified earlier that you went before the grand jury
8 and you used the Lating affidavit as your, quote, "outline,"
9 correct?

10 **A.** Yes, sir.

11 **Q.** In the Lating affidavit, there's nothing in there that
12 says Reddy Annappareddy said something incriminating on an
13 audiotape or an audio recording device worn by Lisa Ridolfi,
14 correct?

15 **A.** Okay. If it wasn't in the affidavit, then that's correct.

16 **Q.** All right. Also not in the affidavit was that Lisa
17 Ridolfi had a desire to become a whistleblower, correct?

18 **A.** I did not see that in the affidavit, sir.

19 **Q.** Right. That's not in the affidavit, correct?

20 **A.** I did not see that in the affidavit.

21 **Q.** Do you need a minute to read the affidavit again? I'll
22 tell you what, when we take a break, I would ask you to look
23 over the affidavit, and see if in the affidavit there is
24 mention of Mr. Annappareddy saying something incriminating to
25 Lisa Ridolfi that was captured on the audiotape. Okay?

1 **MR. PHELPS:** Objection. Your Honor. The affidavit
2 speaks for itself. If he's going to put the witness to work,
3 then we can sit here and the clock can run.

4 **MR. FLOWERS:** No, I'm actually trying to preserve
5 everybody --

6 **THE COURT:** It is not in dispute?

7 **MR. PHELPS:** No, Your Honor. The affidavit speaks for
8 itself.

9 **THE COURT:** I know what's in the affidavit. I mean,
10 we've seen it several times. I don't know that we need to burn
11 up a lot of time asking this witness to confirm what is or is
12 not in the affidavit.

13 **MR. FLOWERS:** I gotcha.

14 **BY MR. FLOWERS:**

15 **Q.** And then the last few questions, Mr. Mosley, and we'll go
16 to lunch.

17 Had you known that Lisa Ridolfi had a desire to be a
18 whistleblower, would you have taken that to the grand jury?

19 **MR. PHELPS:** Objection --

20 **THE WITNESS:** That wouldn't have been my decision.
21 That would have been -- I was working with the Assistant United
22 States Attorney at the time, and that would have been something
23 of discussion. I don't -- I don't make that determination,
24 sir.

25 **BY MR. FLOWERS:**

1 Q. Right. But at the time, using a recording device, you
2 agree, was a very serious tactic, and you would have known what
3 was going on at the time, correct?

4 A. Yes. Yes, sir.

5 MR. FLOWERS: With that, we'll take a break and come
6 on back after lunch.

7 THE COURT: All right. It's 12:40 now. Let's break
8 for an hour and 15 minutes, which will bring us back at 1:55.
9 We'll be in recess.

10 (Whereupon, a recess was taken from 12:42 p.m. to 1:55
11 p.m.)

12 THE CLERK: All rise. This Honorable Court resumes in
13 session.

14 THE COURT: Please be seated.

15 Is Mr. Greenberg here?

16 MR. FLOWERS: He's on his way, Your Honor. Sorry
17 about that.

18 THE COURT: Let's get the witness back on the stand.
19 Do you mind going ahead and proceeding?

20 MR. FLOWERS: Yes, we can, Your Honor.

21 THE COURT: Go ahead.

22 Start the clock.

23 BY MR. FLOWERS:

24 Q. Good afternoon, Mr. Mosley.

25 A. Good afternoon, sir.

1 Q. Before we broke, we were talking a little bit about what
2 you were able to tell the grand jury. Do you remember that
3 line of questioning, sir?

4 A. Yes, sir.

5 Q. All right. I now want to ask you a few more questions
6 about Mr. Tokofsky in this case.

7 A. Yes, sir.

8 Q. You testified earlier that he was the whistleblower?

9 A. Yes, he was.

10 Q. All right. You recall Mr. Tokofsky also mentioning this
11 idea that Middle Easterners were running the Pharmacare
12 pharmacies that Mr. Annappareddy was in charge of. Do you
13 recall him telling the investigative team that?

14 A. No, I don't recall.

15 Q. All right. Let me direct your attention then to the
16 Defense Exhibit Number 7. Let's see if I can refresh your
17 recollection, sir. All right.

18 Are you at Defense Exhibit Number 7, sir?

19 A. (No audible response.)

20 Q. Again, we've been over this memo a couple of times. Do
21 you recognize it, sir?

22 A. Yes, sir.

23 Q. All right. I want to direct your attention to Page 4 of
24 Defense Exhibit 7, if I can. And you see on Page 4 of Defense
25 Exhibit 7, in about the middle -- well, there's a heading that

1 says, one, "Use of International Interns."

2 Do you see that heading there, sir?

3 A. Yes. Yes, sir.

4 Q. Do you see that probably a third of the way down from that
5 heading, you see the words "According to Tokofsky."

6 Do you see that?

7 A. Yes, sir.

8 Q. And it says, "Annappareddy strategically places these
9 individuals in his stores so that he has a Middle Eastern
10 pharmacist, as well as Middle Eastern technicians in every
11 store."

12 Do you see that --

13 A. Yes, sir.

14 Q. -- in the memo there, sir?

15 A. Yes, sir.

16 Q. Now, you testified earlier that Ms. Ridolfi's use of this
17 idea that there was Middle Easterners who were engaged in some
18 kind of hushed activity, that was concerning for you. Do you
19 recall that, sir?

20 A. Yes, I recall it.

21 Q. Does this refresh your recollection that Dennis Tokofsky
22 also had this idea that Mr. Annappareddy was working with
23 Middle Eastern people to do things illegally?

24 A. It appears that -- it didn't appear to state that anything
25 was illegally done, as it relayed to Middle Eastern pharmacists

1 and technicians.

2 Q. Well, I don't want to --

3 A. You know.

4 Q. Why don't we read this together, and we'll see if you stay
5 with that same testimony.

6 The next sentence says, "This helps Annappareddy
7 facilitate running his business in the fashion that he wants
8 to, disregarding regulatory and legal compliance issues."

9 Again, the question for you, Mr. Mosley, is seeing that
10 the whistleblower is making these allegations that
11 Mr. Annappareddy is using Middle Eastern people to avoid
12 regulatory and legal compliance issues, does that raise the
13 same concern that it raised for you when you considered
14 Ms. Lisa Ridolfi's mention of Middle Easterners and
15 Mr. Annappareddy?

16 A. I guess so.

17 Q. It raises concerns because that's a pretty serious
18 allegation to make; fair to say?

19 A. Yes.

20 Q. You never investigated that allegation?

21 A. No, I did not.

22 Q. And you never investigated the allegation that Lisa
23 Ridolfi made about Middle Easterners?

24 A. No, I did not.

25 Q. And, again, I know you testified about this earlier, but I

1 just want to be very clear. You had occasion to review Laurie
2 Gutberlet's memos, right? You testified about that earlier?

3 A. Yes.

4 Q. Before you went into the grand jury, you reviewed all of
5 Laurie Gutberlet's memos?

6 A. I can't recall, sir.

7 Q. Was it your practice, back in 2013, before you went into a
8 federal grand jury and raised your hand under oath, to review
9 all of the memos in the file?

10 A. That's accurate, yes.

11 Q. Fair to say you followed your practice back in 2013 of
12 preparing yourself to go under oath in a federal grand jury?

13 A. Yes, sir.

14 Q. I want to talk to you, Mr. Mosley, about your grand jury
15 testimony in which you indicated that you -- you spoke with
16 employees at Pharmacare. Do you recall that testimony, sir?
17 You spoke with former and current employees at Pharmacare. Do
18 you recall that testimony, sir?

19 A. No, I don't.

20 Q. Let me direct your attention then to Plaintiff's
21 Exhibit --

22 **MR. PHELPS:** Your Honor, before there's a question, we
23 do have the expert -- one of Plaintiff's experts is in the
24 room. There was a witness sequestration order. I understand
25 that experts are not the same, but I just want to make a record

1 of that.

2 **THE COURT:** All right. I'll take note of that. But I
3 generally do not oppose experts sitting in at trial, and the
4 evidence rule allows for it.

5 **MR. PHELPS:** I understand.

6 **MR. FLOWERS:** And Judge Anderson, I want to apologize,
7 also just to the Government. We would have -- and to the
8 Court, quite frankly -- would have -- for better practices,
9 just to let you know that we do have an expert here,
10 Mr. Jed Smith, who is listening to the testimony. As the Court
11 has very well said, he can do that. I'm sorry I didn't bring
12 it to your attention earlier.

13 **BY MR. FLOWERS:**

14 **Q.** Again, let me direct your attention to your grand jury
15 testimony here. Yeah. Plaintiff's Exhibit 71. I'll direct
16 your attention to -- it looks like I've lost the page line cite
17 here. Give me two more seconds, and we'll move on and perhaps
18 come back.

19 While I'm looking for this, let me ask you, Mr. Mosley --
20 all right. Here we go.

21 Let me direct your attention to Page 14 of your grand jury
22 testimony, and I would direct you to line 5 through line 8.

23 Do you see your testimony there, sir?

24 **A.** Yes, sir.

25 **Q.** Does that refresh your recollection that you interviewed

1 present and former employees at the Pharmacare chain?

2 **MR. PHELPS:** Objection. I think it mischaracterizes
3 that he interviewed them.

4 **BY MR. FLOWERS:**

5 **Q.** Let me ask it this way: Mr. Mosley, did you have occasion
6 to interview employees at the Pharmacare chain?

7 **A.** Yes.

8 **Q.** Did you interview present and former employees at the
9 Pharmacare chain?

10 **A.** Yes.

11 **Q.** Your other investigators on the investigative team also
12 interviewed employees in the Pharmacare chain?

13 **A.** Yes.

14 **Q.** You testified earlier that delivery logs were one way for
15 you to be able to know whether a patient's medicine was
16 delivered to the patient. Do you remember that testimony, sir?

17 **A.** Yes, sir.

18 **Q.** Knowing that delivery logs is one way to know whether
19 medications were delivered, you never interviewed any of the
20 delivery truck drivers, correct?

21 **A.** That's not correct. I believe we did interview delivery
22 drivers.

23 **Q.** Did you write a memo on that interview?

24 **A.** I'm quite sure. You're taking me back 10 years ago, but I
25 recall talking to delivery drivers.

1 Q. Do you recall their names?

2 A. No, sir.

3 Q. Do you recall talking to a delivery driver by the name of
4 Ernest McCray?

5 A. I didn't talk to him, but the name sounds familiar.

6 Q. Well, again, I want to be very, very clear that your
7 testimony is that you're not sure whether you spoke to delivery
8 drivers?

9 A. I can't recall.

10 Q. You can't recall whether you spoke to delivery drivers
11 back in 2013?

12 A. No, I can't recall.

13 Q. You can't recall whether you spoke to delivery drivers
14 back in 2012?

15 A. I can't recall.

16 Q. You understand that speaking to delivery drivers is one
17 very good way to figure out whether delivery logs were filled
18 out and medications were delivered.

19 A. That's correct.

20 Q. You never testified to the grand jury about any interviews
21 you had with delivery drivers, correct?

22 A. I don't recall. In the grand jury testimony, during the
23 grand jury?

24 Q. Yes.

25 A. I would have to look at the transcript to see whether or

1 not I spoke of any drivers that would have been interviewed.

2 Q. All right. Well, you've got the transcript there. It's
3 at Plaintiff's Exhibit 71, if you want to review the transcript
4 to see if you spoke to any delivery drivers, see if that
5 refreshes your recollection.

6 A. Do you want me to read the entire transcript?

7 Q. No. I simply you want to look at the transcript -- did
8 you review your transcript in preparation for your testimony
9 here today, sir?

10 A. Yes, I did look at the transcript. I don't recall seeing
11 it in the transcript.

12 Q. All right. You don't recall seeing that you interviewed
13 delivery truck drivers from Mr. Annappareddy's business,
14 correct?

15 A. Yes, that's correct.

16 Q. In 2013, you never interviewed -- you don't recall
17 interviewing anyone in 2013 that was a delivery truck driver
18 for Mr. Annappareddy, correct?

19 A. That's correct.

20 Q. You don't recall interviewing any delivery truck drivers
21 in 2012, correct?

22 A. That's correct. Now, are you talking about me
23 specifically, or the team? Because I believe the name that you
24 just mentioned sounds familiar. So the team could have
25 interviewed one of the drivers. I'm just not certain. I don't

1 recall specifically interviewing any of the drivers.

2 Q. And you prepared for your testimony here today, correct?

3 A. Yes, I did.

4 Q. And in preparing for your testimony, you reviewed the
5 grand jury testimony?

6 A. Yes, sir.

7 Q. You reviewed the reports from Laurie Gutberlet?

8 A. Yes.

9 Q. You reviewed your own reports?

10 A. Yes.

11 Q. What other documents did you review in preparation for
12 your testimony here today under oath?

13 A. Just trial exhibits and deposition, I believe.

14 Q. All right. I want to ask you some more questions about
15 the interviews that you or your colleagues conducted of
16 employees at Pharmacare as you investigated this alleged
17 Medicaid fraud.

18 Did you ever interview a woman by the name of Naveen,
19 N-A-V-E-E-N, Abdullah?

20 A. The name doesn't sound familiar to me at all.

21 Q. Are you familiar with where she worked at Pharmacare?

22 A. No. Her name doesn't sound familiar.

23 Q. Your testimony is then that the name doesn't sound
24 familiar, or you don't remember interviewing her? I'm trying
25 to nail you down as to what exactly your testimony is, sir.

1 A. I do not recall interviewing that individual, and the name
2 does not sound familiar.

3 Q. All right. You're not aware that Naveen Abdullah was a
4 fraud investigator on the staff of Pharmacare?

5 MR. PHELPS: Objection. He's already told what he
6 remembers about her, or lack thereof.

7 THE COURT: I think he's already said that.

8 BY MR. FLOWERS:

9 Q. Mr. Mosley, in conducting a thorough interview of the
10 Pharmacare alleged Medicaid fraud, good investigation would
11 interview fraud investigators that worked for Pharmacare; is
12 that fair to say, sir?

13 A. Yes.

14 Q. Mr. Mosley, earlier today I had to ask you questions about
15 the 14-day rule for reversals. Do you recall that line of
16 questions, sir?

17 A. Yes.

18 Q. Do you recall your testimony was that there was no law
19 requiring that medication to be reversed in 14 days, that was
20 the conclusion of your research. Do you recall that, sir?

21 A. Yes, sir.

22 Q. Did you share your research with Maura Lating?

23 A. I can't recall, sir.

24 Q. You have occasion to share your research on this 14-day
25 rule with Sandra Wilkinson, one of the prosecutors in this

1 case?

2 A. Yes.

3 Q. When did you do that, sir?

4 A. I'm not sure when, but I usually communicate to the team.

5 Q. Did you have an occasion to write an email on that?

6 A. It's possible that I would have written an email. If not
7 an email, we would have met about that. We often had meetings,
8 if it wasn't documented via email.

9 Q. Did you write a report on the conclusion of your research
10 that there was no 14-day rule?

11 A. I wouldn't have -- not necessarily a report. It was
12 probably a question posed to me to do research as to whether or
13 not there was a 14-day rule, and I would just come back with an
14 answer, either through an email or in the meeting, you know,
15 communication in the meeting. But not necessarily a report for
16 just a question regarding the 14-day rule.

17 Q. Did you have occasion to tell Cathy Pascale about the
18 14-day rule?

19 A. I tell the team as a whole, including Cathy Pascale.

20 Q. All right. And your testimony today is you may have told
21 the team verbally?

22 A. That's correct, sir.

23 Q. You may have told the team by email?

24 A. That's correct, sir.

25 Q. You can't remember whether you did tell the team verbally;

1 is that correct?

2 A. I can't recall whether I told them verbally or through an
3 email.

4 Q. Okay. I want to ask you some questions, Mr. Mosley, about
5 the 28-day refill policy. Do you recall, sir?

6 A. No, I don't.

7 Q. As a Medicaid fraud investigator, you took it upon
8 yourself to stay abreast of the relevant laws and regulations
9 around Medicaid back in 2013?

10 A. Yes, sir.

11 Q. You're aware that there was no 28-day rule requiring
12 pharmacies to conduct refills back in 2013?

13 A. I can't say for sure.

14 Q. And just so I'm clear, there was no law requiring
15 pharmacies to do an automatic refill within 28 days?

16 A. I can't recall, sir.

17 Q. Let me show you what's been marked as Plaintiff's
18 Exhibit 2.

19 A. Okay.

20 Q. Do you see Plaintiff's Exhibit 2 there, sir?

21 A. Yes.

22 Q. All right. Do you recognize Plaintiff's Exhibit 2 as
23 being part of the Maryland Medicaid Pharmacy Program?

24 A. Yes, that's what I see here.

25 Q. And you see the advisory that was put out on November 4,

1 2011?

2 A. Yes.

3 Q. You have reason to believe that that advisory was not in
4 effect in July of 2013?

5 A. No reason to believe not.

6 Q. You see that that advisor -- that advisory -- do you see
7 that advisory does not allow for refills that are refilled more
8 than 35 days after the drug was previously dispensed?

9 A. Yes, that's correct.

10 Q. And you understand that the 28-day automatic refill is not
11 a legal requirement, except for HIV drugs?

12 A. This is referring to the HIV drugs, though. In reference
13 to the HIV drugs, this is correct, yes.

14 Q. Right. Now, I want to be clear about that. I don't want
15 to confuse you.

16 Right, for HIV drugs?

17 A. Yes. This is only referencing HIV drugs.

18 Q. Right.

19 A. And not the other drugs.

20 Q. Exactly. So then for an auto refill, if it's not an HIV
21 drug, you're not aware of any regulation that would require an
22 auto refill to be done within 28 days?

23 A. No, I'm not.

24 Q. Mr. Mosley, I asked you some questions earlier about your
25 role in the investigation, and you testified that you had done

1 surveillance of Pharmacare. Do you recall that testimony?

2 A. Yes, sir.

3 Q. Do you recall that you had done trash dumps of Pharmacare?

4 A. Yes, sir.

5 Q. You had done mail covers of Pharmacare?

6 A. I didn't specifically do the mail covers, no, I didn't.

7 Q. You worked with others that did the mail covers?

8 A. Yes.

9 Q. Let's just kind of walk through that investigation and let
10 me ask a few follow-up questions.

11 When you did surveillance of Pharmacare back in 2013, you
12 didn't do that surveillance with Sandra Wilkinson, correct?

13 A. No, I didn't.

14 Q. You didn't do that surveillance with Cathy Pascale,
15 correct?

16 A. No, I didn't.

17 Q. When you did trash dumps and you looked in the trash, you
18 didn't do those trash dumps or retrievals with Sandra
19 Wilkinson, correct?

20 A. No, I didn't.

21 Q. You didn't do that with Cathy Pascale, correct?

22 A. Correct.

23 Q. All right. When you engaged in or worked with others who
24 engaged in mail covers, Sandra Wilkinson was not involved in
25 the mail covers, correct?

1 A. Correct.

2 Q. Cathy Pascale was not involved in the mail covers,
3 correct?

4 A. Correct.

5 Q. The interviews of witnesses in this case, you testified in
6 your grand jury that you interviewed both former and current
7 employees of Pharmacare, correct?

8 A. Yes.

9 Q. For most of those interviews, fair to say Sandra Wilkinson
10 was not present?

11 A. Correct.

12 Q. For most of those interviews, fair to say Cathy Pascale
13 was not present?

14 A. Correct.

15 Q. Just a few more questions.

16 In 2013, Mr. Mosley, you had been a fraud investigator --
17 I think you corrected my math -- for 18 years. Do you remember
18 that testimony, sir?

19 A. Yes, sir.

20 Q. As a federal fraud investigator, your duty was to
21 investigate crimes and follow the facts wherever they led you,
22 correct?

23 A. That's correct.

24 Q. Your duty was to not show any prejudice or favor, it
25 simply was to follow the facts, correct?

1 A. Correct.

2 Q. You never started an investigation with a preordained idea
3 about where the investigation should go, correct?

4 A. Correct.

5 Q. You never started an investigation hoping that it would
6 turn out one way or the other, correct?

7 A. Correct.

8 Q. You know to do that is not to be an investigator, that is
9 simply trying to follow the facts, correct?

10 A. That's correct.

11 Q. You know that an investigator that starts out hoping for a
12 certain outcome is not an investigator you want to work with,
13 correct?

14 A. That's correct.

15 Q. Mr. Mosley, I think you corrected me, yet again, when you
16 told me that you retired --

17 A. Yes, sir.

18 Q. -- from the Department of Health and Human Services.
19 When did you retire, sir?

20 A. August 2020.

21 Q. Congratulations on your retirement.

22 When you retired in August of 2020 -- I'm sorry?

23 A. 2020, yes.

24 Q. 2020. Okay.

25 When you retired in August of 2020, how many years of

1 service did that make?

2 A. Twenty-five years in law enforcement, 32 years in
3 government services.

4 Q. I want to focus on your 25 years in law enforcement. Did
5 you have occasion to win awards in your 25 years of law
6 enforcement?

7 A. Yes, sir.

8 Q. You won awards for the cases that you were part of?

9 A. Yes, sir.

10 Q. You won awards for trying to follow the case and do the
11 right thing, correct?

12 A. Correct.

13 Q. You won awards for trying to seek justice, correct?

14 A. Yes, sir.

15 Q. You recognize that sometimes justice is walking away from
16 a case, correct?

17 A. That's correct.

18 Q. Sometimes the evidence is not enough for charges to be
19 brought, correct?

20 A. That's correct.

21 Q. In your 25 years of service, you never won an award for
22 walking away from a case because it was the just thing to do,
23 correct?

24 A. Correct.

25 **MR. FLOWERS:** Your Honor, I just have a couple more

1 questions. But before I end my examination of Mr. Mosley, I
2 would just like to very briefly consult with co-counsel and
3 Mr. Annappareddy.

4 **THE COURT:** Go ahead.

5 **MR. FLOWERS:** Thank you.

6 Thank you, Your Honor.

7 **THE COURT:** Anything further?

8 **MR. FLOWERS:** Just a couple questions.

9 **BY MR. FLOWERS:**

10 **Q.** Mr. Mosley, I asked you a series of questions about
11 automatic refills in a 28-day period. Do you recall those
12 questions?

13 **A.** Yes.

14 **Q.** And I just want to be clear, you understood, back in 2013,
15 that there was no law prohibiting automatic refills if a doctor
16 prescribed the refill? You understand -- was that your
17 understanding of the law back in 2013?

18 **A.** It was a 28-day policy on auto refills; is that -- is that
19 your question?

20 **Q.** No. My question is a little bit different, sir.

21 The question is: You're unaware of no law that required
22 automatic refills to happen within 28 days if a doctor
23 prescribed it?

24 **A.** I'm not familiar with that.

25 **Q.** Last set of questions, Mr. Mosley.

1 As a fraud investigator, you understand that under the
2 sentencing guidelines --

3 A. Yes, sir.

4 Q. -- it's the amount of loss which drives the amount of time
5 that someone is going to do if they're convicted of fraud. You
6 understand that, sir?

7 A. That is correct.

8 Q. You understand that there are a lot of factors that go
9 into what a sentence will be for someone accused of fraud. Do
10 you understand that?

11 A. Yes.

12 Q. You understand there are a lot of factors that are
13 important for Medicaid fraud, particularly, your expertise,
14 correct?

15 A. Yes, sir.

16 Q. And you understand that, again, the most important factor
17 is loss.

18 A. That is correct.

19 MR. FLOWERS: I have no further questions,
20 Judge Anderson.

21 THE COURT: All right.

22 Mr. Phelps, you may examine the witness.

23 MR. PHELPS: Thank you, Your Honor.

24 - - -

25 CROSS-EXAMINATION

- - -

BY MR. PHELPS:

Q. Mr. Mosley, do you have Plaintiff's Exhibit 71 in front of you? It's your grand jury testimony?

A. Yes, I do.

Q. I believe you were asked on your direct examination if you disclosed Dennis Tokofsky's *qui tam* to the grand jury during your testimony?

A. Yes.

Q. Could you take a look at Page 26 of your grand jury testimony, and just take a glance at it.

A. Yes, sir.

Q. Did you disclose Dennis Tokofsky's *qui tam* to the grand jury?

A. Yes, sir.

Q. Agent Mosley, do you have Plaintiff's Exhibit 70 in front of you? It's the search warrant affidavits.

A. Yes, sir.

Q. You were asked about the dollar figure, but if you wouldn't mind, please, reading the entire sentence.

A. Okay. "In total, 59 of the 76 prescription medications reviewed have thus far shown a shortage at one or more pharmacy locations, with a total potential fraud loss as of October 31st, 2012, of approximately 2,672,067 for the nine locations examined."

1 Q. And it says in that sentence a shortage at one or more
2 Pharmicare locations, correct?

3 A. Yes, it does.

4 Q. Agent Mosley, if you could pull up Plaintiff's Exhibit 47
5 for me, please. You were shown this email during your direct
6 examination. Do you recall that?

7 A. Yes.

8 Q. Who wrote the email?

9 A. This is Mike DiPietro.

10 Q. Is it to several members of the investigative team,
11 including you?

12 A. Yes, it is.

13 Q. Could you take a look at the file name of the attachment?

14 A. "Summary of Expert Review MAD and the Excel File."

15 Q. Is MAD the initials of Michael A. DiPietro?

16 A. No, it isn't.

17 Q. It's not?

18 A. Oh, yes, it is. I'm sorry.

19 Q. And there was a spreadsheet attached to this exhibit?

20 A. Yes, it is.

21 Q. And there are a number of figures on this spreadsheet, and
22 at the bottom it had the 2.6-million number that was similar to
23 what was in the Lating affidavit?

24 A. Yes.

25 Q. Mr. Mosley, do you have the sophistication to prepare a

1 spreadsheet like this yourself?

2 **MR. FLOWERS:** Objection, Your Honor, to the leading.
3 I've let it go on for a pretty long time, and now he's just
4 testifying.

5 **THE COURT:** Well, the last question wasn't leading.
6 Some of the other ones were. Did you have the expertise to
7 prepare a spreadsheet; I don't think that's leading, so I would
8 overrule that objection.

9 Don't lead your own witness, Mr. Phelps.

10 **THE WITNESS:** No, sir.

11 **BY MR. PHELPS:**

12 **Q.** Did you work with Mike DiPietro and the MEDIC together on
13 the loss calculation in this case?

14 **A.** Yes, I did.

15 **Q.** And did Mike DiPietro ever suggest to you that you lie or
16 mislead the grand jury in this case?

17 **A.** No --

18 **MR. FLOWERS:** Objection, Your Honor, leading as to
19 the --

20 **MR. PHELPS:** It's not a leading --

21 **MR. FLOWERS:** -- who, what, where, when, why
22 questioning.

23 **THE COURT:** I don't think that was leading.

24 Overruled.

25 Go ahead.

1 THE WITNESS: No, not at all.

2 BY MR. PHELPS:

3 Q. Did you lie to the grand jury when you testified on
4 July 23rd, 2013?

5 A. Absolute not.

6 Q. Did you intentionally mislead the grand jury as to
7 anything you testified about on July 23rd, 2013?

8 A. Absolutely not.

9 Q. Did anybody on the investigative team encourage you to be
10 dishonest in front of the grand jury on July 23rd, 2013?

11 A. No, they did not.

12 Q. Agent Mosley, could you go ahead and read the rest of the
13 email of Mike DiPietro that begins with the highlighted
14 language.

15 A. "That said, the reviews will be significantly augmented by
16 the addition of DC Medicaid data, fee for service, and MCOs.
17 We really need this ASAP: DC's version of MADAP, ASAP;
18 Maryland MCOs, ASAP; PA MCOs; PA's version of MADAP; NC MCOs;
19 NC's version of MADAP; and private payors."

20 Q. Did MEDIC 1495 include any of these sources at all?

21 A. No, they did not.

22 Q. Agent Mosley, I'm going to direct you to Plaintiff's
23 Exhibit 40. This is the MEDIC fulfillment letter that you
24 received with respect to MEDIC 1495. Do you see that?

25 A. Yes, I do.

1 Q. And you were asked questions about this letter previously.
2 Do you remember that?

3 A. Yes.

4 Q. Can we just take a look at the first page. Do you see
5 where it says "Pharmacare at DC"?

6 A. Yes.

7 Q. How many different files did MEDIC 1495 prepare for
8 Pharmacare at DC?

9 A. Five different files.

10 Q. And there were nine pharmacies analyzed in MEDIC 1495?

11 A. That's correct.

12 Q. I'll go to the second page. Does this include some of
13 these files as well?

14 A. Yes, it does.

15 Q. And the third page, does that include some of the files?

16 A. Yes, it does.

17 Q. Fourth page, does it include some of the files?

18 A. Yes, it does.

19 Q. And the fifth page, does it include some of the files?

20 A. Yes.

21 Q. And is there a listing of the files at the bottom of the
22 fifth page?

23 A. Yes, it is.

24 Q. And another listing of files on the sixth page?

25 A. Yes, it is.

1 Q. And then there's more files listed on the seventh page?

2 A. Yes, it is.

3 Q. And then do you see that language that you were asked
4 about, where it says "the information provided"?

5 A. Yes.

6 Q. Sitting here today, do you recall reading that language
7 10 years ago when you received this?

8 A. No, I did not.

9 Q. Do you recall discussing this language with anybody else
10 on the investigative team 10 years ago?

11 A. No, I did not.

12 Q. Did you ever have a conversation with the MEDIC where they
13 told you you could not use their analysis for the search
14 warrant or the indictment?

15 A. No.

16 Q. Agent Mosley, where were you born and raised?

17 A. Washington, D.C.

18 Q. And you still live in the D.C. area?

19 A. Yes, I do.

20 Q. Did you go to college?

21 A. Yes, I did.

22 Q. Where did you go?

23 A. Bowie State University.

24 Q. Okay. And you mentioned that you have government
25 experience beyond being a law enforcement agent; is that right?

1 A. That's correct.

2 Q. What was that experience?

3 A. I was a management analyst.

4 Q. Do you recall why you opened the Pharmacare case?

5 A. We received an allegation from a *qui tam*.

6 Q. Is it normal to open a case when you receive a *qui tam*?

7 A. Yes, it is.

8 Q. How many *qui tam* -- how many cases you have opened in your
9 career arising out of *qui tams*?

10 A. Not as many.

11 Q. Have you worked on *qui tams* in your career?

12 A. Yes.

13 Q. Prior to July of 2013?

14 A. Plenty of them, yes, sir.

15 Q. And *qui tams* can include -- *qui tams* are, themselves,
16 civil cases, right?

17 A. That's right.

18 Q. And so does your experience at HHS OIG include both civil
19 and criminal experience?

20 A. Yes, that's correct.

21 Q. Did you know Mr. Annappareddy when you opened the case?

22 A. Not at all.

23 Q. Did you know anyone who knew Mr. Annappareddy when you
24 opened the case?

25 A. Not at all.

1 Q. Did you have any personal animosity towards
2 Mr. Annappareddy?

3 A. Not at all.

4 Q. What was your role in the investigation?

5 A. I was one of the investigators. But what I did, I
6 collected a lot of data. So I gathered the insurance
7 information, the data, and I worked hand-in-hand with the
8 Health Integrity, MEDIC. But I also did everything else that
9 entails through the investigation, all the investigative work
10 as well.

11 Q. Was there anybody else who worked with the MEDIC along
12 with you?

13 A. I was basically hands-on, specifically contact with the
14 MEDIC.

15 Q. Okay. And who else worked with you on the government
16 side?

17 A. Well, we had FBI Special Agent Maura Lating; DCIS Defense
18 Criminal Investigative Service James Ryan; Medicaid Fraud
19 Control Unit Investigator Pamela Arnold; and also Jimmy Young
20 who was an investigator with the Office of Personnel
21 Management.

22 Q. Was Jeremy Dykes on this case?

23 A. Yes, he was.

24 Q. What did Jeremy Dykes do?

25 A. Jeremy Dykes provided us with the Medicaid data. He was

1 definitely hands-on on the Medicaid on the stateside and
2 provided me with the Maryland Medicaid data as well as the MCOs
3 and MADAP.

4 Q. Did Mike DiPietro work with you on this case?

5 A. Yes, he did. He usually worked with me as well.

6 Q. What was Mike DiPietro's role in this case?

7 A. Mike was also hands-on with the data. We worked well
8 together as far as gathering the data to produce and send over
9 to the MEDIC.

10 Q. Was Mike DiPietro in the civil division of the U.S.
11 Attorney's Office?

12 A. Yes.

13 Q. Would you call this a parallel case, Mr. Mosley?

14 A. Yes.

15 Q. And generally, what was kind of the differentiation of the
16 role between the civil side of the case and the criminal side
17 of the case?

18 A. Usually, the criminal says take precedent over the civil
19 matter. So what we do, we work the criminal matter, and after
20 the criminal matter, then we look at the civil case.

21 Q. What was Mr. DiPietro doing in late 2012, early 2013 in
22 this case?

23 A. Well, we were working with the data, gathering the data,
24 communicating with the MEDIC, Health Integrity.

25 Q. So let's just get some verbiage correct. What is Health

1 Integrity?

2 A. Health Integrity is the contractor, the Medicare
3 contractor for Medicare Part D that handles pharmacy
4 prescription drugs.

5 Q. And whatever the contractor's name is that has that
6 contract, they're generally referred to as the MEDIC, right?

7 A. Yes.

8 Q. And MEDIC stands for something?

9 A. Medicare Drug Integrity Contractor.

10 Q. Okay. Great.

11 Had you worked with the MEDIC in cases before Pharmacare?

12 A. All the time, yes, I have.

13 Q. What was your understanding of the kind of work that MEDIC
14 performed?

15 A. Good work. I relied on them in providing assistance in my
16 investigations.

17 Q. And do you know whose idea it was to use the MEDIC in the
18 Pharmacare investigation?

19 A. I spoke with myself, I spoke with the team, and that
20 included the AUSAs, the Assistant United States Attorney, and
21 also the investigative team to use the MEDIC to do what we call
22 an in-and-out analysis, invoice reconciliation is what we call
23 it.

24 Q. Have you worked with the MEDIC to do in-and-out analyses
25 in prior cases before Pharmacare?

1 A. I have not.

2 Q. Who at the MEDIC did you work with on the Pharmacare case?

3 A. I worked with a young lady by the name of Lori Gillin; and
4 also, Melissa Rapoza, who was an investigator; and Don DeGroff.

5 Q. What about Robin Sroka?

6 A. Robin Sroka, yes. She was the analyst.

7 Q. In terms of seniority, who was the highest ranking member
8 of the MEDIC team that you worked with?

9 A. That was Don DeGroff.

10 Q. Did you talk to Mr. DeGroff on the phone?

11 A. Yes, I did.

12 Q. Did you talk to other members of the MEDIC team on the
13 phone?

14 A. On numerous occasions, yes.

15 Q. Did other members of the investigative team, such as AUSA
16 Mike DiPietro, join you on some of these calls?

17 A. Yes.

18 Q. What is the "in," in an in-and-out analysis?

19 A. The "in" is what's been purchased, as far as the
20 inventory. What did the facility purchase is the "in." What's
21 in stock, I'm sorry.

22 Q. And how did you get the inventory data in this case?

23 A. I reached out -- first and foremost, reached out to the
24 wholesalers, that included the larger ones, Cardinal,
25 AmeriSource, McKesson, and I subpoenaed those -- those

1 companies to receive the purchases that were made by
2 Pharmacare.

3 Q. Did Pharmacare have several suppliers?

4 A. Yes.

5 Q. And what is the "out" in an in-and-out analysis?

6 A. Basically, what was billed. What was billed to the
7 Medicare, to the health insurance programs, and was actually
8 delivered and billed to the program.

9 Q. And who was responsible for getting that data to the
10 MEDIC?

11 A. I got -- I gathered and sent all of the data over to the
12 MEDIC.

13 Q. Did the MEDIC team ever have questions about the data that
14 you supplied to them?

15 A. Yes, they did.

16 Q. What would you do in all of those instances?

17 A. I would always go back to the source, the insurance
18 company, whether it's Medicaid, private insurers, to get the
19 information they needed.

20 Q. Did you have the subject matter expertise to answer
21 questions about data that came from these other sources?

22 A. No, I did not.

23 Q. Agent Mosley, I'm showing you what is marked as Defense
24 Exhibit 31, and it's an email chain. I'm going to go to the
25 earliest email in time.

1 Agent Mosley, what is the date of the email that I'm
2 highlighting here?

3 A. April 22nd, 2013.

4 Q. And who is it from?

5 A. It's from Lori Gillin.

6 Q. And she was a member of the MEDIC team?

7 A. That's correct.

8 Q. And who is it to?

9 A. Robert Mosley, myself.

10 Q. What does she say in the first line?

11 A. "I have processed the MD" -- which is Maryland -- "FFS" --
12 fee-for-service -- "Medicaid data and included the results in
13 the analysis. I am currently reviewing the MD MCO Medicaid
14 data and have a few questions."

15 Q. And take a look at the next email in time above it. What
16 you did do with that email?

17 A. I sent it to Jeremy Dykes. "Hello, Jeremy. Please see
18 below message regarding the Maryland MCOs."

19 Q. And to look at the next email in time, what did Mr. Dykes
20 do?

21 A. Looks like he sent it to Craig Andresini, who works for
22 the Maryland Medicaid Fraud Control Unit, looking for answers
23 to the questions.

24 Q. And did Mr. Andresini reply?

25 A. Yes. "Here the answers we have so far."

1 Q. And it says in red, below -- we don't have a color copy,
2 but you understand sometimes you can populate an older email
3 and you change the color of the font to indicate that you're
4 responding, correct?

5 A. That's correct.

6 Q. And what did Jeremy do with the information from
7 Mr. Andresini?

8 A. He sent the information to me.

9 Q. At the bottom of this page, what did you do with that
10 information on April 25th, at 10:30 a.m.?

11 A. I sent that information over to the MEDIC, to Lori Gillin
12 and cc'd Melissa Rapoza.

13 Q. Is that an example of the kinds of things you would do in
14 this case?

15 A. Yes, that was typical of what I did.

16 Q. Agent Mosley, I'm showing you what is marked as Defense
17 Exhibit 34. What is this email, Agent Mosley?

18 A. This is an email from Mike DiPietro to Sandra Wilkinson,
19 cc'd Jeremy Dykes, Cathy Pascale, myself, Richard Kay.
20 "Discussion with CMS data people."

21 Q. Who are the CMS data people?

22 A. That's the MEDIC.

23 Q. Just go ahead and read the first line for me that I have
24 highlighted here.

25 A. "We spoke with them today about the in-and-out analysis.

1 Long story short."

2 **Q.** And then if you could go ahead and skip through and read
3 the last bullet point that I have highlighted.

4 **A.** "By preliminary reports, we mean that the MD Medicaid MCO
5 data will not be including the mix just yet. Even without that
6 data, it sounded as if there will be shortages evidence with
7 most of the drugs at most of the locations. So when we add in
8 the MCO and private pay data, those shortages will only get
9 larger."

10 **Q.** Because that MCO and private pay data was ultimately not
11 included in MEDIC 1495, correct?

12 **A.** No, it was not.

13 **Q.** Agent Mosley, I'd like you to turn your attention to
14 Defense Exhibit 38. It's an email chain. I'm going to take
15 you to the earliest email in time.

16 **MR. FLOWERS:** Your Honor, I'm going to object. It's
17 lack of foundation. He's just putting up documents and leading
18 the witness through these documents. You know, there's no idea
19 what's going on, where we're going with this because there's a
20 lack of foundation.

21 **THE COURT:** Well, he just went through the last chain,
22 this witness was in that chain. So I don't have a problem with
23 it so far. We'll see what this is about.

24 **MR. PHELPS:** It's to the witness, Your Honor.

25 **THE COURT:** All right.

1 Overruled for now.

2 **BY MR. PHELPS:**

3 **Q.** Agent Mosley, did you receive an email from Don DeGroff at
4 the MEDIC on May 6th, 2013?

5 **A.** Yes, I did.

6 **Q.** Could you go ahead and read.

7 **A.** It says "Quick note," in the subject line. "Robert, just
8 to keep you informed, the invoice review process is proceeding
9 nicely. I've reviewed three this afternoon for content.

10 Plumtree, 2.4 million; Old Emmorton, 496,000; and Greensboro,
11 127,000. Number are rough and not finalized, but significant.
12 We are hoping to have almost all of them done and packaged for
13 a send by Thursday afternoon."

14 **Q.** And to go to the next email in the chain, did Mr. DeGroff
15 email you again on May 9th?

16 **A.** Yes, he did.

17 **Q.** Okay. And just take a look at this email. Generally,
18 what is he telling you in this email?

19 **A.** The invoice, the reviews have been completed, and he's
20 going to send over the data to me.

21 **Q.** I want you to read the last paragraph of this email,
22 Agent Mosley.

23 **A.** "Hope this lack of detail is sufficient for the time
24 being, as I know you are trying to draft the search warrants.
25 Please feel free to call me. The best number to use going

1 forward is (210)995-9925."

2 Q. So did Don DeGroff provide you this information for use in
3 the search warrant?

4 A. Yes, he did.

5 Q. And he was the most senior member of the team, correct?

6 A. Yes, that's correct.

7 Q. Agent, I'm going to point you to Plaintiff's Exhibit 42.
8 You were shown this earlier. It's an email from Jeremy Dykes.
9 You didn't receive the one at the top, but you did receive
10 Mr. Dykes' email, correct?

11 A. Yes, that's correct.

12 Q. Who else received the email from Mr. Dykes on May 17th,
13 2013?

14 A. Mike DiPietro, Cathy Pascale, Pam Arnold, and it was cc'd
15 to Carol Kelly.

16 Q. Who is Carol Kelly?

17 A. She was an auditor who works for the Maryland Medicaid
18 Fraud Control Unit.

19 Q. If you could, what was the date of this email?

20 A. It was May 17th, 2013.

21 Q. Okay. Agent Mosley, I'm showing you Plaintiff's
22 Exhibit 43. Did you also get an email from Cathy Pascale on
23 May 17th, 2013?

24 A. Yes, I did.

25 Q. Could you go ahead and read the highlighted language for

1 me?

2 A. "All, I'm attaching the in-and-out analysis that Robert
3 received yesterday. I will be sending the analysis for each
4 pharmacy individually. Please write down your questions so
5 that we can organize them before we talk to the experts who
6 will put the analysis together. The largest shortages are at
7 Pharmacare at Plumtree and then Old Emmorton. We are on the
8 right track."

9 Q. And did you subsequently have -- I'm going to show you
10 Defense Exhibit 42. Did you subsequently have a meeting with
11 Ms. Pascale and Mr. Dykes and Mr. DiPietro about the MEDIC
12 analysis?

13 A. Yes, we did.

14 Q. And could you go ahead and -- what is the date of this
15 email?

16 A. The date is Monday May 20th, 2013.

17 Q. And who is it from?

18 A. It's from Cathy Pascale.

19 Q. And it's to many members of the investigative team,
20 including you, correct?

21 A. Yes, that's correct.

22 Q. And could you just go ahead and read the highlighted
23 language that I have here from Ms. Pascale.

24 A. Yes.

25 "Jeremy Dykes, Mike DiPietro, Robert Mosley and I met this

1 morning to review the in-and-out analysis that we received on
2 Friday. As Mike said at our meeting, we still only have half
3 the story."

4 Q. And we don't to read them, Agent Mosley, but there's eight
5 enumerated questions that follow, correct?

6 A. That's correct.

7 Q. Are these questions similar to the eight questions that
8 you were shown in the email that you sent to the MEDIC folks?

9 A. Exactly, yes.

10 Q. Agent Mosley, before you ever passed any inventory or
11 claims data, from whatever source you received it, to the
12 MEDIC, did you alter, manipulate, or change the data in any
13 way?

14 A. No.

15 Q. In your experience as an agent, did you have the ability
16 to perform data deduplication in claims data?

17 A. No, I didn't.

18 Q. If I gave you MADAP data right now and Medicare data and
19 asked you to deduplicate it, could you do it?

20 A. No, I couldn't.

21 MR. FLOWERS: Objection. Calls for speculation.

22 MR. PHELPS: It's not speculation --

23 THE COURT: Overruled. Overruled.

24 BY MR. PHELPS:

25 Q. Before the search warrants were executed in this case and

1 before you testified in front of the grand jury on July 23rd,
2 2013, did you know about potential data overlap or claims
3 overlap between the Maryland AIDS Drug Assistance Program and
4 Medicare or any other source?

5 A. No, I didn't.

6 Q. Did you withhold any important or material information
7 from the MEDIC when you supplied them information and data in
8 this case?

9 MR. FLOWERS: Objection to "material" or "important,"
10 it's vague. Calls for a legal conclusion.

11 MR. PHELPS: I've heard a lot of important questions
12 the last few days, Your Honor.

13 THE COURT: Overruled.

14 BY MR. PHELPS:

15 Q. Did you intentionally mislead the MEDIC in any way in this
16 case, Mr. Mosley?

17 A. I never did.

18 Q. Did you mislead your prosecutors?

19 A. No.

20 Q. Did you feel that they misled you?

21 A. No.

22 MR. PHELPS: No further questions.

23 Thank you, Mr. Mosley.

24 THE COURT: Any additional questions of this witness?

25 MR. FLOWERS: Yes, Your Honor. We've got some

1 questions. If we could just have the Court's indulgence. We
2 want to consult with my co-counsel.

3 **THE COURT:** All right. Go ahead.

4 **MR. PHELPS:** If I could have some more time before
5 they take over. There's something about the admissibility of
6 the interview reports that we had discussed about --

7 **THE COURT:** I'll allow it. Go ahead.

8 **BY MR. PHELPS:**

9 **Q.** Agent Mosley, as an HHS OIG agent, you're required to
10 investigate alleged violations of federal laws and regulations,
11 correct?

12 **A.** That's correct.

13 **Q.** And when you interview a witness in the course of these
14 investigations, you're required to write a report, correct?

15 **A.** That's correct.

16 **Q.** And you maintain these reports in your HHS OIG file in the
17 ordinary course of business?

18 **A.** Yes, yes, sir.

19 **Q.** I'm showing you what is marked as Defense Exhibit 54. Is
20 this a report that you've prepared regarding the interview of
21 Sindhura Motaparthi?

22 **A.** Yes, sir.

23 **Q.** Likewise, Agent Mosley, Defense Exhibit 56, is this an
24 interview report that you prepared for an October 25th, 2013,
25 proffer of Jigar Patel?

1 A. Yes.

2 Q. Agent Mosley, I'm showing you what is marked as
3 Exhibit 29 -- sorry, 59. Is this an interview report that you
4 prepared for a January 24th, 2014, interview of Dan Walker?

5 A. Yes.

6 MR. PHELPS: No further questions. Thank you.

7 THE COURT: All right.

8 Mr. Flowers?

9 MR. FLOWERS: Thank you, Judge Anderson.

10 Mr. Phelps, what exhibits were those that you just showed?

11 MR. PHELPS: 54, 56 and 59. I hope.

12 - - -

13 **RECROSS-EXAMINATION**

14 - - -

15 **BY MR. FLOWERS:**

16 Q. Mr. Mosley, for those exhibits that Mr. Phelps just showed
17 you, 54, 56 and 59, all of those exhibits were prepared in the
18 criminal case; is that correct?

19 A. Yes, that's correct.

20 Q. All those exhibits were prepared as you were working to
21 prosecute Mr. Annappareddy, correct?

22 A. That's correct.

23 Q. Those exhibits are not open to the public, are they?

24 A. No, they are not.

25 Q. Mr. Mosley, you were asked a number of questions about DC

1 Medicaid, DC MADAP [sic], the Maryland MCOs. Do you remember
2 that set of questions from Mr. Phelps?

3 A. The email?

4 Q. Yes.

5 A. Yes.

6 Q. And the questions were that by looking at DC Medicaid, for
7 example, that that would increase loss. Do you remember those
8 questions?

9 A. Was it -- I'm not sure what your question is.

10 Q. Let me see if I can get the exhibit.

11 MR. FLOWERS: Mr. Phelps, what exhibit were you
12 showing him that had about the DC Medicaid and DC MADAP?

13 MR. PHELPS: I rid myself of my exhibits already. It
14 was . . .

15 BY MR. FLOWERS:

16 Q. It's Plaintiff's Exhibit 47. There we go.

17 Do you remember seeing this exhibit on your direct
18 examination?

19 A. Yes, sir.

20 Q. Okay. You understand that for the DC Medicaid data, that
21 those purchases were not included in the loss for this case?

22 A. In the MEDIC 1495; is that what you're talking about?

23 Q. No. I'm just talking about here, this DC Medicaid data
24 here.

25 A. Right. That's correct.

1 Q. On Plaintiff's Exhibit 47.

2 A. Yes.

3 Q. Right. And you understand that the DC purchases that are
4 linked to DC Medicaid were not included in this case?

5 A. Right.

6 Q. Right.

7 And you also understand then that the loss would not
8 increase with inclusion of DC Medicaid data for this case?

9 A. I'm not certain of that.

10 Q. Okay.

11 A. It wasn't included in the --

12 Q. The loss --

13 A. -- in the loss calculation. That's right.

14 Q. So it wouldn't increase the loss calculation in this case?

15 MR. PHELPS: Objection. Asked and answered.

16 THE COURT: Overruled.

17 THE WITNESS: If we would have included the DC
18 Medicaid data, it could have increased the loss amount.

19 BY MR. FLOWERS:

20 Q. It wasn't included in this case, though, is what you're
21 saying, right?

22 A. Yes, that's correct.

23 Q. All right.

24 A. Yes, that's correct.

25 Q. All right. And for the DC MADAP, you understand that DC

1 MADAP actually gave Pharmacare \$2 million of drugs. So let's
2 go to DC version of MADAP. Do you see the second bullet there?

3 A. Yes, I see that.

4 Q. All right. You understand that that program provided
5 Pharmacare \$2 million in inventory for drugs?

6 A. Not the MADAP program. In the District of Columbia?

7 Q. Yes. I'm sorry, DC ADAP.

8 A. That might be true, yes.

9 Q. So just so we're clear for the record, the DC ADAP program
10 actually provided Pharmacare \$2 million in inventory for drugs?

11 A. Yes.

12 Q. All right. That would not increase loss, correct?

13 A. Correct.

14 Q. The Maryland and the Pennsylvania MCOs and the NC MCO, you
15 recognize that those do not pay for HIV medications.

16 A. No, that's not HIV medication, the MCOs aren't.

17 Q. Right. The MCOs don't pay for HIV medication, correct?

18 A. Correct.

19 Q. And you understand that HIV medication was what drove this
20 case, correct?

21 A. Well, it was the expensive drugs. I'm not certain "drove"
22 the case, because we also looked at other drugs outside of the
23 HIV drugs.

24 Q. Understood.

25 And the Maryland MCOs, the Pennsylvania MCOs, and NC MCOs,

1 they don't pay for HIV drugs, correct?

2 A. That's correct.

3 Q. And your testimony earlier today is that the HIV drugs
4 were the highest drugs -- the most expensive drugs, I should
5 say, in this case, correct?

6 A. That was the most expensive drugs, correct.

7 Q. With respect to the Pennsylvania version of MADAP, do you
8 see that at Plaintiff's Exhibit 47, and the North Carolina
9 version of MADAP.

10 Do you see that there?

11 A. Yes.

12 Q. You recognize that those are secondary payors, right?

13 A. Yes.

14 Q. And as secondary payors, they have to work with primary
15 payors, right?

16 A. That's correct.

17 Q. So they don't increase the loss, because they're secondary
18 payors, correct?

19 A. Right.

20 Q. And then there is that last bullet that says "Private
21 Payors" there.

22 A. Yes.

23 Q. You understand that private payors had nothing to do with
24 this case, right?

25 MR. PHELPS: Objection. It's in an email about the

1 case.

2 THE COURT: Overruled.

3 Go ahead.

4 THE WITNESS: We didn't have the private payors.

5 BY MR. FLOWERS:

6 Q. Right. You didn't have private payors in this case,
7 correct?

8 A. In the in-and-out analysis?

9 Q. Right.

10 A. Correct.

11 Q. And the loss in this case did not include private payors,
12 correct?

13 A. Correct.

14 Q. You also were asked a series of questions, Mr. Mosley,
15 about your grand jury testimony. And I want to follow up
16 there, at Plaintiff's Exhibit 71.

17 On Page 25, Mr. Mosley, of Plaintiff's Exhibit 71, you
18 were asked whether you -- whether you told the grand jury about
19 Dennis Tokofsky's *qui tam*. Do you recall that?

20 A. Yes.

21 Q. You can see at Plaintiff's Exhibit 71, Page 25, line 25,
22 question is: "QUESTION: And did Dennis actually file what we
23 call a *qui tam* lawsuit as a result of the practices he learned
24 was operating at Pharmacare?"

25 And then you answered, "ANSWER: Yes, he did."

1 Do you see that, sir?

2 A. Yes, sir.

3 Q. And then it goes on that you explained to the grand jury
4 that a *qui tam* is something in which somebody provides
5 information to the government about essentially fraud. It's
6 like a whistleblower. Do you see where I'm reading there,
7 Page 26 --

8 A. Yes.

9 Q. -- your answer from 5 to 9?

10 A. Yes.

11 Q. In your grand jury testimony, you still stand by your
12 testimony that you did not inform the grand jury that
13 Lisa Ridolfi had a desire to be a whistleblower, correct?

14 A. That's correct.

15 Q. In your grand jury testimony about Dennis Tokofsky being a
16 relator, essentially, you explain that he could get a reward as
17 a result of telling the government this information. Do you
18 see where you explained that on Page 26, from line 17 to
19 line 21? Do you see that there, sir? We're on Page 26,
20 line 17 to line 21, there's a question, and you agree with the
21 question.

22 A. That's correct.

23 Q. Okay. And the question essentially asked you that the
24 relator can win a reward as a result of telling the government
25 of, essentially, fraud information. Do you see that question

1 and the answer there, sir?

2 A. Yes.

3 Q. You didn't explain how much of the reward the relator
4 could receive, did you?

5 A. Not at all.

6 Q. You never told the grand jury that Dennis Tokofsky stood
7 to receive millions of dollars, potentially?

8 A. I wouldn't have known that, sir, how much he would have
9 received.

10 Q. You agree that receiving a reward for millions of dollars
11 creates a financial incentive in the outcome of the case,
12 correct?

13 A. Not this particular -- I'm not certain in this particular
14 case, if that's what you're asking me.

15 Q. No, what I'm asking you is, for Dennis Tokofsky, had he
16 been compensated in this case, he stood to be compensated by a
17 pretty handsome sum, correct?

18 A. That's correct.

19 Q. Well over 100,000; fair to say?

20 A. Fair to say.

21 Q. And you didn't explain that to the grand jury, correct?

22 A. Not at all.

23 Q. You indicated on your direct examination with Mr. Phelps
24 that before you were in law enforcement, you were an analyst.
25 Do you recall that testimony?

1 A. Yes, that's correct.

2 Q. As an analyst, it's your testimony you don't know how to
3 work a spreadsheet, an Excel spreadsheet?

4 A. I can work a spreadsheet, yes, I can.

5 Q. All right. So when you were shown the spreadsheet that
6 was attached to Michael DiPietro's email, it was fair to say
7 you would know how to work that spreadsheet?

8 A. I know how to work a spreadsheet. I think the question
9 was relating to this particular case and dealing with the
10 in-and-out analysis. That sort of thing.

11 Q. Your testimony is that MEDIC did all of the analysis in
12 this case?

13 A. Yes, MEDIC did the analysis.

14 Q. You didn't do any analysis on the drug Kaletra?

15 A. No, I did not.

16 Q. You did no analysis on the drug Abilify?

17 A. No, I did not.

18 Q. No analysis on Lidoderm?

19 A. No, I did didn't.

20 Q. And no analysis on Norvir?

21 A. No, I did not.

22 Q. I just want to be clear. There was some questions to you,
23 Mr. Mosley, about the MADAP program. And let me be clear, your
24 understanding is that MADAP is a secondary payor, correct?

25 A. That's correct.

1 Q. And MADAP has to work with a primary payor, correct?

2 A. That's correct.

3 Q. And if the MADAP information is not decoupled from the
4 primary payor information, there's a risk of double-counting,
5 correct?

6 A. I don't know your question. If it's not taken out of
7 the --

8 Q. Let me see if I can ask a better question for you.

9 We went over this a little bit, but we can go over it a
10 little bit again, and perhaps I can be even clearer.

11 For an AIDS medication, you have a primary payor and a
12 secondary payor and MADAP paying for that AIDS medication?

13 A. That's correct.

14 Q. Okay. There is just one AIDS medication that's being paid
15 for, correct?

16 A. That's correct.

17 Q. Yet there are two people paying for it, two entities
18 paying for it, correct?

19 A. Yes, that's correct.

20 Q. When you do the analysis to figure out a loss an -- when
21 you do the analysis to figure out who paid for what, you've got
22 to account for the fact that you have two payors paying for one
23 thing, correct?

24 A. Yes. A certain percentage, of course. Like I said, the
25 80/20 percent split, usually. So you only have -- you have the

1 two payors, but you have the one drug.

2 **Q.** Exactly.

3 And it's the same thing if you have one drug and one
4 payor, it's different than another drug and two payors,
5 correct?

6 **A.** Correct.

7 **Q.** And whenever you do the analysis to figure out who's
8 paying for what, you must be mindful of secondary payors,
9 correct?

10 **A.** That's correct.

11 **MR. FLOWERS:** Mr. Mosley, thanks a lot.

12 We have no further questions.

13 **THE COURT:** Anything further by the Government?

14 **MR. PHELPS:** No, Your Honor. Thank you.

15 **THE COURT:** Thank you. You may step down.

16 Want to go ahead and take our midafternoon break at this
17 time?

18 **MR. FLOWERS:** We sure can, Your Honor.

19 **THE COURT:** Let me say, my law clerk handed me a sheet
20 of paper. The top part of that walks us through the three
21 evidence rules that I mentioned earlier when we were talking
22 about the use of the Harris interview in terms of impeachment
23 of a witness who testifies by -- character testimony about
24 truthfulness. The two cases that are cited are the only two
25 cases that my law clerk back in South Carolina has been able to

1 find dealing with a question of whether a government 302 report
2 qualifies as a public record in a civil trial. Both of them
3 hold that it did. But they are both unpublished district court
4 cases. So not a whole lot of binding precedent, but at least a
5 little bit guidance.

6 But I would advise you to hit the books over the weekend
7 and see if you can find me some more authority on this very
8 pivotal question. All right.

9 We'll be in recess for 15 minutes.

10 **THE CLERK:** All rise. This Honorable Court is now in
11 recess.

12 (Whereupon, a recess was taken from 3:33 p.m. to 3:48
13 p.m.)

14 **THE CLERK:** All rise. This Honorable Court resumes in
15 session.

16 **THE COURT:** My law clerk pointed out that while
17 Mr. Mosley was on the stand, the Government asked him to
18 identify three documents, but they were not offered into
19 evidence at this time; is that correct?

20 **MR. PHELPS:** Yes, Your Honor. It's pending all of the
21 briefing that we're going to do this weekend.

22 **THE COURT:** All right. Very good.

23 Please call your next witness.

24 **MR. GREENBERG:** Your Honor, we call Melissa Rapoza
25 through deposition designation the parties have done in

1 advance, and we are going to play video clips. After the
2 session today is finished, we'll provide the Court and the
3 courtroom deputy with a --

4 **THE COURT:** Transcript.

5 **MR. GREENBERG:** Not a transcript, I think it's a video
6 file called a clip report. And it'll be Plaintiff's 141.

7 **THE COURT:** Very good. I assume when the deposition
8 was taken, you followed the traditional rules that all
9 objections were preserved except as to the form of the
10 question. I mean, am I going to get some objections during the
11 playing of the video, is my question?

12 **MR. GREENBERG:** Well, you know, I think, actually, the
13 objections were removed from the video clips that were
14 prepared.

15 **MS. FARBER:** Your Honor, we follow the traditional
16 rules that form and foundation objections remain during the
17 depositions. As with a traditional deposition, you don't waive
18 objection to things like relevance.

19 **THE COURT:** Right.

20 **MS. FARBER:** So there may be.

21 **THE COURT:** So if we get some objections, we'll need
22 to stop the tape so I can rule on the objections.

23 **MR. GREENBERG:** I guess stop the clock for that. So,
24 yeah, Your Honor -- yes -- yes, counsel is right, we did not
25 state evidentiary objections.

1 **THE COURT:** Please proceed.

2 Start the clock.

3 (Video playing.)

4 **THE COURT:** I'm sorry, state the objection.

5 **MS. FARBER:** Objection, hearsay.

6 **MR. GREENBERG:** Your Honor, if I'm understanding this
7 correctly, I think this is a statement by Special Agent Mosley,
8 it's a statement of a party opponent's agent.

9 **THE COURT:** I think Agent Mosley would be certainly
10 identified with the opposing party in the case.

11 **MS. FARBER:** Your Honor, it's Melissa Rapoza's
12 out-of-court statement. And, also, it's not a statement
13 against interest. So even if it were Mosley's statement --

14 **THE COURT:** There's a lot of misconception about that.
15 A statement against interest is a 804 hearsay exception when
16 the declarant is not available. Over and above that, anything
17 your opponent says is admissible in a civil trial. It's for
18 the fact-finder to determine if it's against interest or not.

19 I think this is a statement by the Government agents, so
20 I'll overrule the objection.

21 **MR. GREENBERG:** Thank you, Your Honor.

22 (Video playing.)

23 **MS. FARBER:** Objection. Relevance.

24 **THE COURT:** Relevance objection?

25 **MS. FARBER:** Yes, Your Honor. Relevance as to

1 providing the DC AIDS Drug Assistance Program's data.

2 **MR. GREENBERG:** So, Your Honor, this is going to
3 require a little bit of explanation.

4 So Special Agent Mosley testified minutes ago that the DC
5 Aids Drug Assistance Program provided over 2-million dollars'
6 worth of inventory of HIV drugs to Pharmacare, which was not
7 included in MEDIC 1495. That makes this undeniably relevant
8 and highly probative, and I don't understand the objection.

9 **THE COURT:** All right.

10 Help me with why it's not relevant, Ms. Farber.

11 **MS. FARBER:** Your Honor, because the DC ADAP data was
12 not in MEDIC 1495, that didn't factor into anyone's state of
13 mind, and it did not -- it wouldn't have affected the
14 results -- it -- it just didn't factor into the number that
15 MEDIC produced that went into the search warrant.

16 **MR. GREENBERG:** That is -- that is absolutely
17 incorrect, Your Honor. And so, first of all -- so the Lating
18 affidavit mentions the DC Aids Drug Assistance Program. The
19 Lating affidavit states that including it would have increased
20 the losses. But the reality is, it would have added \$2 million
21 of inventory, offsetting the purported losses. That's what was
22 found in the criminal case by Judge Russell as a preclusive
23 effect.

24 Moreover, it goes to probable cause and malice. Because
25 Special Agent Mosley knew about the DC Aids Drug Assistance

1 Program, and he didn't give the data for it to MEDIC. He made
2 a conscious choice, "I'm not going to give those data showing
3 \$2 million-plus of HIV inventory to MEDIC for MEDIC 1495,"
4 because he wanted to rig the numbers. That goes to state of
5 mind, makes it show that he intentionally rigged MEDIC 1495.
6 And he acted maliciously because he misled the prosecutors; he
7 misled the magistrate judge; he misled the grand jury.

8 **MS. FARBER:** Your Honor, if I may. The testimony that
9 we heard from former Agent Mosley did not indicate anywhere
10 that he knew that the DC ADAP program was going to have -- that
11 there were \$2 million --

12 **THE COURT:** So you say that did not come out at all
13 with Mr. Mosley on the stand?

14 **MS. FARBER:** Am I misrecollecting --

15 **THE COURT:** We can take a recess and do a word search
16 on the transcript, if we need to.

17 **MR. GREENBERG:** I think that's worth doing, actually,
18 just to get this right. This is important.

19 **MS. FARBER:** I certainly could be mistaken, but my
20 recollection was that --

21 **THE COURT:** I honestly don't remember --

22 (Cross talk.)

23 **MR. GREENBERG:** It is important to get this right, so
24 it is a very important issue.

25 **MS. FARBER:** Yeah, right. So --

1 (Cross talk.)

2 **THE COURT:** Stop the clock on this.

3 **MS. FARBER:** If I may. Ultimately, what we're talking
4 about is evidence that was discovered or learned about in more
5 detail after the search warrant in the indictment. So that
6 dollar value, what DC ADAP contributed or didn't contribute to
7 the damages analysis, that's something that, if it was learned,
8 was learned after MEDIC 1495. So for our purposes here,
9 assessing the agent's state of mind, probable cause as it
10 existed at the time of the search warrant affidavit, this is
11 not relevant.

12 **MR. GREENBERG:** Your Honor, that's not what he
13 testified to. He didn't say that he learned about it later.
14 He just said he knew that DC ADAP provided over \$2 million, and
15 I think we should look at the transcript.

16 **THE COURT:** All right. Hold on one second.

17 My law clerk does recall Agent Mosley mentioning the
18 \$2 million towards the latter part of his testimony.

19 **MR. GREENBERG:** Does or doesn't?

20 **THE COURT:** Does recall.

21 **MS. FARBER:** My recollection, I don't recall hearing
22 anything about a time period which Agent Mosley learned of that
23 number and whether it was before or after the search warrant
24 affidavit. I don't know if counsel brought that up. And
25 without that foundation this evidence isn't relevant --

1 **THE COURT:** Well, normally, I would say, Ms. Farber,
2 this is a matter of not relevance but some -- and it can be
3 explored on cross-examination, but you can't cross-examine this
4 witness, right? Are we going to hear some cross-examination on
5 this video?

6 **MS. FARBER:** No, Your Honor, there's no
7 cross-examination.

8 **THE COURT:** I guess we better take a recess and see
9 what Agent Mosley said.

10 **MS. FARBER:** Our argument would be, Your Honor, if
11 Agent Mosley does say he was aware, at the time of the search
12 warrant affidavit, that DC ADAP would add \$2 million in
13 pills --

14 **THE COURT:** So you concede he said that?

15 **MS. FARBER:** -- then I will withdraw, but only if
16 Mosley specifically says the timing of when he learned that
17 information. I truly don't recall either way what he testified
18 to about the timing.

19 **MR. GREENBERG:** Your Honor, the whole line of
20 questions, if I remember correctly, was about his grand jury
21 testimony in July 23rd, 2013, and about his understanding as of
22 the 2013. So I don't understand. They had a chance to ask him
23 follow-up questions if they believe he didn't know that then.

24 **THE COURT:** Well, I'm going to overrule the objection
25 and let it in. I'll allow the Government plenty of time on

1 their case in chief to develop it further with other witnesses,
2 if you can.

3 So overruled.

4 (Video playing.)

5 **MS. FARBER:** Excuse me. There was an objection to
6 form. That was just cut out there.

7 **THE COURT:** All right. You're pressing on the
8 objection to form? You want a ruling on whether the question
9 was improper?

10 **MS. FARBER:** Now that I'm looking at the transcript,
11 Mr. Greenberg just rephrases his question, so we can move on.
12 But I'm not sure if other objections are cut out of the
13 transcript.

14 **THE COURT:** I'll just pay attention to the rephrased
15 question then.

16 **MS. FARBER:** Thank you, Your Honor.

17 (Video playing.)

18 **MS. FARBER:** Your Honor, here there's another
19 objection to form that was cut out, and I would like a Court
20 ruling on that objection. I'm not sure why these objections
21 have been omitted from Plaintiff's designations.

22 **THE COURT:** What was the last question?

23 **MS. FARBER:** The question is:

24 "QUESTION: Okay. So it would be inaccurate to represent
25 that the MEDIC invoice reviews did reflect the loss to the

1 government, right?"

2 And then there's an objection.

3 **THE COURT:** And you object on the grounds of leading?

4 **MS. FARBER:** Yes, Your Honor. Leading and
5 speculation.

6 **MR. GREENBERG:** Your Honor, these objections -- I
7 think the clock kept running for the last --

8 **THE COURT:** Stop the clock. Stop the clock.

9 **MR. GREENBERG:** Yeah, we're losing a fair amount of
10 time --

11 **THE COURT:** Stop the clock.

12 **MR. GREENBERG:** So we did remove the objections from
13 the deposition designations. We also provided the deposition
14 designations to counsel weeks ago. I thought that was --
15 something like this, I don't even actually understand the
16 objection. But, you know -- yes, we did remove the objections
17 from the video clips. That was done.

18 **THE COURT:** Well, that's unfortunate. Can you back up
19 and let me see the question again on the transcript? Is that
20 possible? Sounded like a leading question. That's the main
21 objection, leading.

22 And what else did you say?

23 **MS. FARBER:** Yes, Your Honor. Leading and
24 speculation. But leading was the main issue. That's correct.

25 **MR. GREENBERG:** Well, to respond to that, it's -- I

1 don't think it's a leading question, given some of the
2 questions Your Honor has allowed by the Government.

3 **THE COURT:** Hold on one second. If there were a jury
4 trial, I'll be a little more concerned about it. But this is a
5 bench trial.

6 I'll overrule the objection.

7 Let's move on.

8 Start the clock.

9 (Video playing.)

10 **MS. FARBER:** Excuse me, Your Honor. I apologize.
11 This section was not designated in what Plaintiff sent to me.
12 Page 56. The designations I received stopped at 56, 5.

13 **MR. GREENBERG:** Let's stop the clock.

14 **THE COURT:** Stop the clock.

15 **MR. GREENBERG:** So these designations were provided to
16 us by the Government, and we included them.

17 **THE COURT:** All right. Was it some of your
18 designations, Ms. Farber?

19 **MS. FARBER:** That's not what my notes reflect. I
20 apologize, Your Honor.

21 **MR. GREENBERG:** Your Honor, I would ask that --

22 **THE COURT:** The pretrial brief has designations by
23 page and line numbers.

24 **MR. GREENBERG:** Page 6 of 11, I believe, has the
25 Government's designations in response that, I believe, is the

1 same counsel sent to us.

2 **THE COURT:** Page 6 and 11 of what?

3 **MR. GREENBERG:** I believe the pretrial order, Your
4 Honor.

5 **THE COURT:** My pretrial order stops on Page 10.
6 That's why I ask. Page 6 and 7 has designations of this
7 witness's deposition, but it doesn't say who did --

8 **MR. GREENBERG:** Oh, I believe the Government sent
9 theirs separately. Hold on.

10 **THE COURT:** ECF-337 is the Government's
11 counter-designation. So you say this disputed testimony was in
12 what the Government designated, Mr. Greenberg?

13 **MS. FARBER:** That's right, Your Honor. I do see it
14 there. I apologize.

15 **THE COURT:** All right. Well, let's move forward then.
16 Let me say now, I'm concerned about the objections being
17 taken out of the transcript because it's depriving the
18 Government of a chance to object timely.

19 **MR. GREENBERG:** Your Honor, that was a
20 miscommunication. I'll blame it on me.

21 **MS. FARBER:** Your Honor, I greatly appreciate your
22 concern. I skimmed the rest of the deposition. I think, for
23 the most part, where I've objected, the question was rephrased,
24 and I didn't object. But if it's all right, I will -- I will
25 chime in if there's an objection that --

1 **THE COURT:** Maybe they coach in South Carolina
2 different. Traditionally, in South Carolina when you take a
3 deposition, the parties agree on the record, "We're going to
4 preserve all objections at the time of trial except as to the
5 form of the question." That means you gotta object to the form
6 of the question so it can be corrected right then. All the
7 other objections are reserved and can be made in the middle of
8 the deposition, for the first time, by counsel.

9 He or she objected during the deposition, and it was taken
10 out. It shouldn't have been taken out. So --

11 **MR. GREENBERG:** Your Honor, yes. And that was -- like
12 I said, that was a miscommunication on our end, and I'll take
13 responsibility for that.

14 **THE COURT:** Ms. Farber, don't hesitate to stand up and
15 object if you have a problem with something about to come in,
16 all right?

17 **MS. FARBER:** Thank you, Your Honor. I appreciate it.

18 **THE COURT:** All right. Let's move forward.

19 (Video playing.)

20 **MR. GREENBERG:** Your Honor, actually, I neglected --
21 forgot to make an important point about the leading objections,
22 and I think this goes to what Your Honor was saying.

23 **THE COURT:** All right.

24 **MR. GREENBERG:** I think it's worth pausing for a
25 minute to say.

1 These two MEDIC witnesses were hostile witnesses. MEDIC
2 works for the Government.

3 **THE COURT:** Right.

4 **MR. GREENBERG:** So the leading objections that we cut
5 have no merit.

6 **THE COURT:** Well, I might agree with you on that. I'm
7 not holding it against you they were deleted. I'm just saying
8 it's unfortunate and creates a little bit of confusion here.
9 But no problem.

10 Go ahead.

11 (Video playing.)

12 **MS. FARBER:** Your Honor, there's a foundation
13 objection here that was cut out.

14 **THE COURT:** All right. A foundation objection?

15 **MS. FARBER:** Yes, Your Honor. The witness repeatedly
16 testified she didn't have a recollection of this, that the
17 question she was being asked would require her to make an
18 assumption. And then she's asked the same question here, and
19 so that is the basis of the foundation objection.

20 **THE COURT:** What's the response?

21 **MR. GREENBERG:** Well, first, I hope the clock is being
22 stopped --

23 **THE COURT:** Stop the clock.

24 **MR. GREENBERG:** -- for these speaking objections.
25 Second, I mean, this is another leading question, and

1 we're allowed to ask a hostile witness a leading question. I
2 don't really understand the lack of foundation objection,
3 frankly.

4 **MS. FARBER:** Your Honor, the objection is not to
5 leading. The objection is to lack of foundation because the
6 witness repeatedly explained that she had no recollection --

7 **THE COURT:** Can we back it up and let me see what she
8 said about this particular statement?

9 **MS. FARBER:** Yes, Your Honor.

10 **THE COURT:** Can you scroll back?

11 **MS. FARBER:** The relevant page and line would be 63/4
12 through 7. Actually started at 62/22 and then going to 63/7.

13 **THE COURT:** Can the technicians back it up for us,
14 please.

15 (Video playing.)

16 **MS. FARBER:** So, Your Honor, the question that follows
17 lacks foundation.

18 **THE COURT:** All right. Let me see the next question
19 that follows.

20 **MS. FARBER:** That would be 63/8 to 12.

21 **THE COURT:** What's on the screen now, is the specific
22 question you object to?

23 **MS. FARBER:** Yes, Your Honor.

24 **THE COURT:** She did say it was an assumption, previous
25 to this.

1 **MR. GREENBERG:** She said it was an assumption, but
2 then I was kind of circling back to her previous testimony how
3 it wasn't a Maryland -- we kind of had an extensive discussion
4 of how, you know, Mosley had misled to believe that MADAP was
5 an MCO, and also Mosley misled them to believe -- didn't tell
6 them that MADAP was separate -- was not available for Medicaid
7 patients. So I mean, this is all kind of set up by the
8 previous testimony that was not objected to.

9 **MS. FARBER:** Your Honor, I must have missed a lot of
10 testimony about how Mosley was purposefully misleading MEDIC.
11 I didn't get any of that from what we've heard previously --

12 **THE COURT:** I'm going to sustain this objection. I've
13 overruled all the other ones. I'm going to sustain this one.
14 But it's in the record as an offer of proof for purposes of
15 appeal. The transcript will be in the record.

16 All right. Let's move forward.

17 Sustain the objection to the last question.

18 Please continue.

19 Start the clock.

20 **MR. GREENBERG:** So Your Honor, the designation has the
21 answer, what should we do about playing it?

22 **THE COURT:** Delete the question and answer. I'm
23 sustaining the objection. I won't consider the question and
24 the answer, but you can leave it in the record as offer of
25 proof, which is required by the Rules of Evidence.

1 **MR. MILLER:** So they can play it all?

2 **THE COURT:** You can play it.

3 (Video playing.)

4 **MR. GREENBERG:** That's all for Ms. Rapoza, Your Honor.

5 **THE COURT:** All right. Next witness, please.

6 **MR. GREENBERG:** If we could stop the clock for a
7 second. There's a witness scheduling matter that I want --

8 **THE COURT:** Stop the clock.

9 Go ahead, Mr. Greenberg.

10 **MR. GREENBERG:**

11 I think Mr. Flowers is going to speak to this.

12 **THE COURT:** All right. Mr. Flowers?

13 **MR. FLOWERS:** We're just trying to figure out
14 witnesses for next week. The Government let us know this
15 morning that I guess a couple of witnesses who will be coming
16 and also Ms. Wilkinson and Ms. Pascale, I guess, there's been
17 discussions to maybe have them go by Zoom.

18 What's been complicated for us, Judge Anderson, is trying
19 to manage our 30 hours without knowing exactly who all of their
20 witnesses are going to be, because we've got to manage our
21 cross of those witnesses. So it's not like a normal trial,
22 right, where you just kind of put on your case, and you don't
23 have to figure out how long your cross is, and that's going to
24 be counted against you. We're doing that and then also
25 thinking about our rebuttal case at the same time --

1 **THE COURT:** I understand.

2 **MR. FLOWERS:** We just have kind of a lot going on.

3 And so I think if we could know from the Government kind of who
4 all their witnesses are going to be, that would allow us --
5 because we know how much we're going to cross their witnesses,
6 that would then allow us to kind of figure out in our case in
7 chief kind of who we call and when we call them.

8 **THE COURT:** Are you saying that you suspect the
9 Government might not call all of the witnesses they've listed
10 on their witness list?

11 **MR. FLOWERS:** Right.

12 **THE COURT:** I think that's a fair request.

13 **MR. PHELPS:** And we, in fact, answered that request
14 this morning. We told them who we were going to call, who we
15 were likely not going to call. And we expressed we also have
16 some scheduling concerns, and we can get to that. But we
17 emailed them this morning. Jeremy Dykes, Jim Ryan and
18 Judge DiPietro will be ready as soon as we need them.

19 **THE COURT:** Live.

20 **MR. PHELPS:** Knock on wood, live, next week.

21 We are unlikely to call Lisa Ridolfi, Dennis Tokofsky or
22 either of the Blomquists.

23 That leaves Ms. Wilkinson and Ms. Pascale, who are
24 unfortunately not available until the following week due to
25 vacations, which is going to present some issues that we can

1 maybe talk about.

2 **MR. FLOWERS:** I just want to be -- I don't want to
3 imply that the Government didn't let us know what was going on,
4 but this has been kind of an issue, at least on our side of the
5 table, and we've been trying to manage and figure out when it's
6 best to bring it to the Court's attention. And so I think now
7 is that time.

8 So we could do -- and I don't know if there's been an
9 agreement yet, but we could certainly do Ms. Wilkinson and
10 Pascale by Zoom so there isn't a break next week. I don't know
11 if we've been able to hold hands on that, but certainly that's
12 our offer to keep things moving.

13 **THE COURT:** So you're consenting those two witnesses
14 being by Zoom? Live on Zoom.

15 **MR. FLOWERS:** Yes, Your Honor.

16 **MR. PHELPS:** Your Honor, my understanding is
17 Ms. Wilkinson is on a boat in the ocean, and so I'm not
18 confident in that.

19 And, frankly, Ms. Pascale is in Europe. And you know, I'm
20 sure she's got things scheduled that she'd like to do while
21 she's there.

22 One proposal that I had, Your Honor, is that perhaps we
23 finish whenever we finish next week, and then we break, and
24 then maybe come back the following Wednesday and finish when
25 everybody else is available again.

1 **THE COURT:** Well --

2 **MR. PHELPS:** Your Honor, so we don't have enough
3 witnesses to get through next week, as far as I can tell. I
4 just don't see it. And then Ms. Wilkinson is available
5 beginning on the 12th. But then Ms. Pascale lands at midnight
6 on the 13th, and so she's going to get home on the wee hours of
7 the 14th. It would be nice if she can wait until the 15th.
8 But then we've got a problem with Ms. Wilkinson on the 12th and
9 bridging the gap to Ms. Pascale on the 15th.

10 My proposal would be, Your Honor, that we get through
11 everything that we can to the middle of next week. That only
12 leaves Ms. Pascale, Ms. Wilkinson, and whoever else they've got
13 in rebuttal and closing for maybe the latter half of the
14 following week.

15 **THE COURT:** Which would be the week that ends on the
16 16th to of June?

17 **MR. PHELPS:** Yes, Your Honor.

18 **THE COURT:** I'm amenable to that. Do you think we can
19 finish by the 16th?

20 **MR. PHELPS:** I mean, it probably depends on what their
21 rebuttal case is, Your Honor. But I don't see why we couldn't
22 fit Ms. Wilkinson, Ms. Pascale and closing in, in three days.

23 **MR. FLOWERS:** Your Honor, a couple things. I'm not
24 clear -- and perhaps the Court can give us some guidance -- on
25 the rebuttal part, is that also part of our 30 hours?

1 **THE COURT:** Yes, it is.

2 **MR. FLOWERS:** All right. It's a little bit -- as the
3 Court knows, that's a little bit tough on us because we have
4 the burden, right?

5 **THE COURT:** I understand.

6 **MR. FLOWERS:** And yet, you know, normally, we would be
7 able to have both a case in chief and a rebuttal on the case.
8 Now we've got to limit our case in chief in anticipation of our
9 rebuttal case, so that's just --

10 **THE COURT:** Well, it's an unusual case because a lot
11 of these witnesses you've been putting up have been the
12 Government's witnesses, so it's almost like a mixed direct and
13 rebuttal at the same time. It's a unique case in that respect.

14 What about the idea that we possibly finish early next
15 week and skip over the weekend and come back late the next week
16 to take these two other witnesses live instead of by Zoom?

17 **MR. FLOWERS:** Right. We would still need to have
18 Mr. Annappareddy testify. We also have, perhaps, a character
19 witness or two, and some other witnesses that we want to have
20 testify. So I think --

21 **THE COURT:** Let me just say, that's the one good thing
22 about a bench trial. We can move witnesses around out of
23 order, out of turn. If we need to fill up some time late next
24 week, you can call the character witnesses you just mentioned
25 to fill in.

1 **MR. PHELPS:** Your Honor, we had a pretrial order where
2 you need to put your will-calls and your may-calls. I have no
3 idea who they're talking about in terms of character witness.

4 **MR. FLOWERS:** Well, given that we had no idea that the
5 Government was going to defend this case by essentially having
6 a character assassination of Mr. Annappareddy. So whether
7 they're character witnesses or rebuttal, we do need to deal
8 with the fact that, for example, Mr. Phelps's open was that
9 there's only going to be one witness who can say that there was
10 no probable cause. So we've got to rebut that, right?

11 So, again, whether they're character witnesses or rebuttal
12 witnesses or some mix of both, this is a bench trial, and --

13 **THE COURT:** So you're saying that because of what was
14 said, nobody stated by the Government about only one witness,
15 that's opening the door to you to designate some new witnesses
16 that are not on your witness list? I mean, is that what you're
17 saying?

18 **MR. FLOWERS:** Well, what I'm saying is I've got to
19 rebut that argument now.

20 **MR. PHELPS:** Your Honor, we've been litigating this
21 for four years. Everybody knows what the case is. Everybody
22 knows who their witnesses are. This is no shock to anybody.
23 These are people we have no idea who they are, we've never
24 heard of them.

25 **THE COURT:** Still, Mr. Flowers, are you proposing new

1 witnesses that have not been designated in the pretrial order,
2 is what I'm saying?

3 **MR. FLOWERS:** As rebuttal, yes, Your Honor. As
4 rebuttal. Which, again, even if this were -- you don't have to
5 put on your rebuttal witnesses in a witness list because you
6 don't know what you're going to need to rebut. I can't --

7 **THE COURT:** I understand. I'll give you some leeway
8 there. I'll give you some leeway there.

9 **MR. FLOWERS:** So that's the -- that's -- I just want
10 to bring all that information to the Court's attention, so
11 that --

12 **THE COURT:** Well, let me think about this overnight,
13 and we'll address it again tomorrow.

14 **MR. PHELPS:** Your Honor, as a recommendation, I would
15 recommend that they call their rebuttal or character witnesses
16 as soon as we're done and ready next week. They don't have to
17 wait --

18 **THE COURT:** That's what I'm saying, with a bench
19 trial, I can compartmentalize what I hear and put it in the
20 right place, even if it comes in advance. I really want to
21 strongly encourage you to bring those witnesses in next week so
22 we can try to get in a full week next week.

23 **MR. FLOWERS:** Right. We'll do the best we can to
24 bring in those witnesses as soon as we can. But what's tough,
25 Your Honor, is I have no idea kind of what their witnesses are

1 going to say. We've got to be able to rebut their witnesses.

2 **THE COURT:** All right. Well, let me think about this
3 overnight. I'd like to get a little more testimony in.

4 Do we have another witness ready to go?

5 **MR. GREENBERG:** We do, Your Honor -- is there more to
6 be said? Mr. Flowers? No. Mr. Phelps? Okay.

7 So we have another witness. I don't know if it would be
8 good to just do the intro today. I mean, if Your Honor wants,
9 we can do that.

10 **THE COURT:** I said I don't want to have any short
11 days. I don't want to stop now. We need to go to 5:30.

12 So call your next witness.

13 **MR. GREENBERG:** All right. Your Honor, the Plaintiff
14 Reddy Vijay Annappareddy calls Jed Smith.

15 **THE CLERK:** Sir, please remain standing and raise your
16 right hand.

17 (Witness sworn.)

18 **THE CLERK:** You may be seated.

19 **THE WITNESS:** Thank you.

20 **THE CLERK:** And, sir, for the record, could you please
21 state and spell your first and last name.

22 **THE WITNESS:** Jed Smith. J-E-D, S-M-I-T-H.

23 **THE CLERK:** Thank you.

24 - - -

25 **DIRECT EXAMINATION**

1 - - -

2 **BY MR. GREENBERG:**

3 **Q.** Good afternoon, Mr. Smith.

4 **A.** Good afternoon.

5 **Q.** What is your occupation?

6 **A.** I am a consultant.

7 **Q.** What kind of consulting work do you do?

8 **A.** I do litigation disputes, investigations, and compliance
9 work.

10 **Q.** And in what area do you do that work?

11 **A.** I focus mainly in the healthcare industry.

12 **Q.** And within the healthcare industry, do you have any
13 specific focus?

14 **A.** I lead my firm's pharmacy sector within our healthcare
15 disputes and economics practice.

16 **Q.** As the leader of your firm's pharmacy sector, what does
17 that mean?

18 **A.** It means I'm the expert on pharmacy issues within my firm,
19 and then I also help lead the team that works on the various
20 pharmacy-related matters we have.

21 **Q.** How large is -- I'm sorry.

22 What is the name of the company that you work?

23 **A.** I work for Ankura Consulting Group.

24 **Q.** How large is Ankura Consulting Group in terms of the
25 number of consultants and analysts?

1 A. I believe we're around 2,000 billable consultants at this
2 point.

3 Q. Okay. And how many people -- how many employees are in
4 the pharmacy sector?

5 A. So we share some resources across the groups, but at any
6 given point in time, there's roughly 18 people that are working
7 on pharmacy-related matters.

8 Q. Okay. For how long have you led the pharmacy sector for
9 Ankura?

10 A. I'd say somewhere in the 8- to 10-year range, I think.

11 Q. And do you have a specific focus in your work in the
12 pharmacy area, or is it all kinds of pharmacy areas?

13 A. I mean, I work in all aspects of the pharmacy industry.
14 So I've done work for some of the nation's largest retail
15 pharmacies, long-term care pharmacies, specialty pharmacies. I
16 also do work for pharmacy benefit managers who adjudicate
17 pharmacy claims. And I do work for health insurers and other
18 clients that are the insurers for pharmacy claims as well.

19 Q. To what extent, if any, has your work had in the pharmacy
20 sector at Ankura involved looking at and analyzing claims data?

21 A. I'd say one of the largest aspects of my job is analyzing
22 complex pharmacy claims data. And I'd say over my career, I've
23 probably analyzed over 2 billion pharmacy claims, if not more
24 than that.

25 **THE COURT:** Did he say billion with a "B"?

1 **THE WITNESS:** Billion with a "B," yes.

2 **BY MR. GREENBERG:**

3 **Q.** Mr. Smith, just so the record is clear, approximately how
4 many claims have you reviewed during your work as the head of
5 the pharmacy sector at Ankura?

6 **A.** Some number over 2 billion. I don't know the exact
7 number.

8 **Q.** And what types of pharmacies in terms of categories of
9 pharmacies, have you done work for?

10 **A.** I've done work for retail pharmacies, specialty
11 pharmacies, long-term care pharmacies, hospital pharmacies. I
12 think that covers the gamut. There may be more. That's what
13 comes to mind.

14 **Q.** What is a the difference between a retail pharmacy and
15 specialty pharmacy?

16 **A.** So generally speaking, a specialty pharmacy is dispensing
17 more expensive medications. Sometimes there will be
18 injectables or they'll have limited distribution agreements
19 with manufacturers of those medications.

20 **Q.** And to what extent, if any, has your work involved
21 closed-door speciality pharmacies?

22 **A.** Could you clarify what you mean by "closed-door."

23 **Q.** Sure.

24 To what extent, Mr. Smith, has your work, with respect to
25 speciality pharmacies, involve that type of pharmacy, where

1 there's no walk-in customers?

2 A. I would say a lot of the specialty pharmacy work I've done
3 relates to closed-door pharmacies where most of the medications
4 are delivered by mail or courier.

5 Q. To what extent, in your experience, looking at -- I'm
6 going to say closed-door, meaning no walk-in patients. Okay?

7 A. Okay.

8 Q. I understand there might be a technical distinction, but
9 just for simplicity; is that all right?

10 A. Yes.

11 Q. All right. So for a closed-door specialty pharmacy, to
12 what extent, if any, is it common, in your experience, for a
13 closed-door specialty pharmacy to have the bulk of its business
14 through deliveries through drivers?

15 A. It would be my expectation that a closed-door pharmacy
16 would generally have some sort of delivery functionality in
17 order to get medications to its customers.

18 Q. To what extent, if any, has your work in the pharmacy
19 area, the head of the pharmacy sector for Ankura, involving
20 analyzing compliance of contracts and regulations, including
21 Medicare Part D?

22 A. So general speaking, my work will have some aspect related
23 to compliance or executing under a contract or government
24 regulations.

25 Q. I want to come back to your experience, Mr. Smith.

1 Before we do that, let's sort of back up to, I guess,
2 before you began your career, if you could, please, tell us
3 about your education.

4 A. Sure. So I received a bachelor's in business
5 administration with a concentration in accounting and a minor
6 in operations and information systems from the College of
7 William & Mary in Virginia.

8 Q. Do you know anybody else in this room that went there?

9 A. (Indicating.)

10 Q. You pointed to Mr. Phelps?

11 A. Yes.

12 Q. Now, after you graduated from William & Mary, to what
13 extent, if any, did you get any professional licenses or
14 certifications?

15 A. I'm a certified public accountant.

16 Q. Okay. And for how many years has the focus of your work,
17 even -- putting aside how long you led the pharmacy sector at
18 Ankura, for how many years has your work focused on the
19 pharmacy sector?

20 A. So I mean, throughout my career, so I've been with Ankura
21 since 2005, so 18 years, over that time period, I've worked on
22 pharmacy-related matters the entire time period.

23 Q. And to what -- going back to your -- to what extent, if
24 any, has your work for Ankura involved defending government
25 against government investigations?

1 A. Sorry, can you ask that one more time.

2 Q. Sure.

3 To what extent, if any, has your work at Ankura involved
4 defending against government investigations or helping a
5 company or an individual defend against government
6 investigations?

7 A. It's hard to put a specific number on how my work breaks
8 up, but I would say a considerable portion of my work would be
9 related to assisting counsel and reviewing and responding to
10 government investigations.

11 Q. And to what extent has your work in the pharmacy sector
12 involved -- if any, that is, involved analyzing claims data for
13 the purpose of assessing compliance with Medicare Part D
14 regulations?

15 A. Sorry. Can you ask that one more time.

16 Q. Sure. Let me start over, and maybe I can short circuit
17 part of this.

18 To what extent, if any, has your work with analyzing
19 claims data been for the purpose of evaluating compliance with
20 federal or state healthcare laws and regulations?

21 A. Generally speaking, when we're assisting a client with
22 responding to a government investigation, there will be an
23 aspect of reviewing Medicare Part D or Medicaid regulations, as
24 defined to me by counsel.

25 Q. And on approximately how many matters have you worked

1 where there was an allegation of some type of healthcare fraud?

2 A. Under that definition, would you include civil and
3 criminal issues?

4 Q. Yes. Whether it was -- yes, I would.

5 A. It would definitely be greater than 10 or 15, I just don't
6 know the specific number.

7 Q. Okay.

8 MR. GREENBERG: I don't know if I need to formally do
9 this in a bench trial, also given there's no objection to
10 Mr. Smith's qualifications, but I'll move his admission --
11 recognition as an expert.

12 THE COURT: Any objection? Any additional voir dire
13 of this witness?

14 MR. PHELPS: No voir dire, Your Honor. I'm curious
15 what he's going to be offered as an expert for. I have a
16 thorough understanding of his opinions regarding the analysis
17 that was done. I'm hearing some questions about compliance
18 with Medicare laws and regulations, and that hasn't been any
19 part of his opinions to this point.

20 THE COURT: Was he deposed pretrial?

21 MR. PHELPS: He was, Your Honor. But I don't have his
22 report -- I don't have any report or opinion from him
23 discussing compliance with Medicare regulations.

24 THE COURT: Do you intend to go into an additional
25 matter with him?

1 **MR. GREENBERG:** I do not, Your Honor. I was simply
2 providing background to show that he's an expert in this area.

3 **THE COURT:** All right. I don't think we have a
4 problem. He's qualified. You may examine the witness as
5 provided in Evidence Rule 702.

6 **MR. GREENBERG:** Okay.

7 **BY MR. GREENBERG:**

8 **Q.** Mr. Smith, you were retained as a data analysis expert in
9 Mr. Annappareddy's criminal case, right?

10 **A.** That's correct.

11 **Q.** Was that in or about July of 2015?

12 **A.** Yes.

13 **Q.** And you've got declarations from the criminal case and
14 your exhibits to those declarations attached to your expert
15 report, correct?

16 **A.** That's correct.

17 **Q.** And those were provided to counsel for the Government
18 about a year ago.

19 **A.** That's my understanding.

20 **Q.** All right. And can you please just provide us with a
21 high-level overview of -- let's actually sort of focus on the
22 issue of topic of duplicate claims.

23 Actually, before I ask you for an overview, let me ask you
24 this sort of preliminary question. To what extent, if any, is
25 it a basic requirement, in your experience, to look for

1 duplicate claims in doing an analysis of claims data?

2 A. So any time you're doing an analysis that involves
3 financial aspects of claims data, you would want to ensure that
4 you are not counting the same claim multiple times.

5 Q. To what extent, if any, does your experience involve
6 investigations that include agents who work for the Department
7 of Health and Human Services Office of Inspector General?

8 A. Generally speaking, in my work, I may not know all of the
9 different investigators that are working on a matter. My work
10 is generally done through the direction of counsel on
11 investigations, and I will interface with counsel.

12 I know of at least four or five cases I can think of where
13 we've presented analysis to government regulators and I believe
14 HHS OIG individuals were present in those meetings.

15 Q. So if I understand your testimony -- correct me,
16 Mr. Smith -- you've attended some meetings where there are
17 presentations where agents from HHS OIG or DHHS OIG --
18 Department of Health Human Services Office of Inspector
19 General, I'll just say DHHS OIG. Okay?

20 A. Yes.

21 Q. There was some meetings that you attended where DHHS OIG
22 agents were present, but you don't know because there were
23 agents behind the scenes, to what extent agents from that
24 agency were involved in other investigations you worked on.

25 A. Correct.

1 Q. All right. Can you please explain for the Court what a
2 secondary payor is?

3 A. Sure.

4 So in healthcare claims, it's possible for a patient to
5 have multiple parties that are going to pay their claim. So
6 the typical parlance would be that you have a primary payor,
7 which is the first payor on the claim. Typically, they're
8 going to be your main insurance and cover the largest portion
9 of the claim. After the primary payor receives a claim and
10 adjudicates it, that claim then moves on, and another claim is
11 submitted to the secondary payor who will pay the balance of
12 the claim based on that secondary payor's benefit structure.

13 Q. And to kind of put it maybe in more sort of layperson's
14 language, basically it means the patient has at least two
15 different insurance programs covering their prescriptions.

16 A. The secondary payor would be the second insurance covering
17 that program, yeah.

18 Q. Right. And in some instances, there could be more than
19 two, right?

20 A. Correct.

21 Q. All right. If you could, please, provide a high-level
22 overview of the work that's set forth in your declaration dated
23 July 17th, 2015, that's an exhibit to your report.

24 A. Sure.

25 So in that declaration, I was asked to review the

1 government's loss calculation that was put forth at
2 Mr. Annappareddy's trial. In that declaration, I was
3 specifically looking at errors related to double-counting and
4 duplicate claims and secondary payors.

5 Q. And to what extent, if any -- let me sort of back up.

6 To what extent, if any, did your work include looking for
7 double-counting errors involving Medicare Part D?

8 A. Generally speaking, my work in that case was looking for
9 double-counting errors across all of the insurance plans that
10 were included in the government's loss calculations. So one of
11 those plans was Medicare Part D, and my general approach was
12 looking for the same prescription showing up under multiple
13 insurance plans. So you could see the same prescription
14 number, the date that the prescription was sold, and drugs
15 showing up in Medicare Part D and another payor. That means
16 the same dispensing event was being calculated twice on the
17 "out" portion of an in-and-out event.

18 Q. And to kind of put that in layperson's terms, when you say
19 "dispensing event," you mean the same claim for the same
20 prescriptions being counted twice?

21 A. Exactly. So if you are doing an analysis that says I'm
22 going to calculate the total number of Atripla pills that were
23 billed to insurance plans, if you count the same prescription
24 multiple times because there are secondary payors, you're
25 counting the same 30 pills multiple times.

1 So if I dispensed a 30-pill bottle of Atripla to a
2 patient, and I bill Medicare Part D for 30 pills, I then also
3 bill the secondary insurer, perhaps it's MADAP, 30 pills as
4 well, so they can pay the co-pay portion of the Medicare Part D
5 claim. So if I look at the claims data and don't remove the
6 duplication of those two, it looks like 60 pills were billed to
7 government insurers, when, in reality, only 30 pills were
8 billed. If I purchased the 30-pill bottle and I had those two
9 claims, I would look at the data and see a 30-pill shortage,
10 when, in reality, I dispensed the one bottle of pills they
11 purchased.

12 **Q.** So if I understand what you just testified to correctly,
13 to put it sort of in layperson's terms, if you are not
14 accounting for duplicate claims, you end up counting the same
15 claims twice.

16 **A.** Exactly.

17 **Q.** And that would mean if you're comparing inventory versus
18 billing, you're multiplying the billing by 100 percent -- or
19 sorry by two, right?

20 **A.** You're double-counting those claims, so you would have
21 twice the number of billings that actually occurred.

22 **Q.** So that dramatically and artificially would increase the
23 billing side?

24 **A.** Depending on the number of duplicate claims that exist,
25 yes.

1 Q. Right. If there's a significant number of duplicate
2 claims, as compared to the number of total claims, if you're
3 not eliminating duplicates, and you have these double-counting
4 errors, that would have a significant artificial and dramatic
5 effect in increasing the billing side versus the inventory,
6 right?

7 A. Correct. Because you'd be overstating the number of pills
8 that were billed.

9 Q. And as a result, that would yield false results, right?

10 A. That's correct.

11 Q. Mr. Smith, have you heard of an entity called MEDIC?
12 M-E-D-I-C in all capital letters.

13 A. I've heard that acronym used before, yeah.

14 Q. Do you have an understanding of what they do?

15 A. They assist the government in various payment integrity
16 initiatives.

17 Q. And -- all right. I may come back to that.

18 And your assignment in this case included looking at nine
19 invoice reviews, collectively referred to as MEDIC 1495, right?

20 A. That's what I was asked to look at in this case, yes.

21 Q. Okay. I do want to sort of circle back to your work on
22 the criminal case.

23 The work that you did, you mentioned that you looked at
24 all the payors in the government's loss calculation. What
25 couple by "the government's loss calculation"?

1 A. So in the criminal case, my understanding was that an
2 auditor from the government put forth a loss calculation. A
3 loss calculation was an in-and-out analysis or invoice or
4 inventory reconciliation analysis that was looking at the total
5 number of pills or medications purchased from wholesalers to
6 the number of pills that were billed by the various Pharmacare
7 pharmacies.

8 Q. Okay. And that loss calculation, was referred to by the
9 Government witness who testified to in an in-and-out
10 calculation, right?

11 A. I can't remember if she used that specific term or not,
12 but that's the term I've heard used for that type of analysis.

13 Q. Do you remember the name Mary Hammond?

14 A. Yes. That was the auditor.

15 Q. And the auditor who did what?

16 A. To my understanding, she's the auditor who performed the
17 government loss calculations presented at trial and testified
18 at the trial.

19 Q. And so when you were referring to the government's loss
20 calculations that you analyzed in the criminal case, you were
21 reviewing the so-called in-and-out analysis of Mary Hammond?

22 A. That's correct.

23 Q. And what is your understanding as an expert, Mr. Smith, in
24 the pharmacy area, of how a proper in-and-out analysis should
25 be done?

1 A. I mean, in my experience, you calculate the quantity of
2 pills that are purchased from all of the wholesalers, and you
3 compare that to the deduplicated volume of claims that were
4 submitted by the insurer -- or the pharmacy to insurers, and
5 then calculating the difference in that purchases versus
6 billing populations.

7 Q. So it kind of -- again, sort of summarize that and put it
8 in layperson's terms, you're comparing billing versus
9 inventory.

10 A. Correct.

11 Q. So if there is a major error on either side of that -- the
12 billing side or the inventory side, either one can cause a
13 materially false result.

14 A. That's correct.

15 MR. GREENBERG: Court's indulgence.

16 BY MR. GREENBERG:

17 Q. Mr. Smith, can you please explain for Judge Anderson what
18 you did to look for double-counting errors in the government's
19 loss calculation presented at the trial in Mr. Annappareddy's
20 criminal case?

21 A. So to identify double-counting errors in the government
22 loss calculation at the criminal case, I received the --

23 THE COURT: Let me -- we need to be clear. Is he
24 talking about the case loss explained in the criminal trial or
25 the MEDIC analysis?

1 **MR. GREENBERG:** He, right now, is talking about, Your
2 Honor, his work in the criminal case, and as an expert, he's
3 allowed to form part of the basis for his opinions on matters
4 outside of evidence.

5 **THE COURT:** All right. Go ahead. I just wanted to be
6 sure I was understanding correctly.

7 **MR. GREENBERG:** Yes, I'm sorry if I wasn't clear on
8 that.

9 (Reporter read back as requested.)

10 **THE WITNESS:** To look for double-counting in the
11 government's loss calculation presented at the criminal case,
12 what I reviewed was, I received data files of all of the claims
13 records that Ms. Hammond relied upon in coming up with that
14 analysis. I was asked to only focus on reviewing errors on the
15 billing side of that calculation. So within at those different
16 claims files, what I did was, perform an analysis looking
17 across each of the different insurance companies. So I believe
18 it might have been 12 insurance plans that were used in the
19 government's loss calculation. I looked to see if the same
20 prescription number, fill date, and NDC were appearing in
21 multiple files from the same pharmacy. So that would indicate
22 the same prescription was present and being double-counted
23 across multiple files.

24 **BY MR. GREENBERG:**

25 **Q.** So if we kind of just sort of do this pictorially, you

1 were looking at the claims data, looking at -- let's pretend
2 we're talking about prescriptions that are dispensed in
3 bottles. Okay?

4 A. Yep.

5 Q. You said something about dispensing event earlier. What
6 you meant by dispensing event, is the filling of a
7 prescription, right?

8 A. Correct.

9 Q. So basically, what you were doing, if each claim in the
10 data was a bottle, you were looking to see if the same bottle
11 with the same prescription number appeared in two separate
12 claim files?

13 A. Correct.

14 Q. All right. Can you sort of give us a high-level overview
15 to the extent, if any, to which you found double-counting
16 errors in the, quote, "loss," end quote, calculation that the
17 government presented at the trial in Mr. Annappareddy's
18 criminal case?

19 A. I remember finding a significant volume of double-counting
20 errors that was in the magnitude of millions of dollars.

21 Q. And -- okay. And to be clear, Mr. Smith, both in the
22 criminal case and in this case, you were not asked to find
23 every kind of error, right?

24 A. That's correct.

25 Q. You were asked to focus on certain types of errors, right?

1 A. That's correct.

2
3 MR. GREENBERG: Court's indulgence.

4 Your Honor, this is sort of a voluminous document. It's
5 already been filed at ECF No. 244-2. It is Mr. Smith's report,
6 along with the exhibits --

7 THE COURT: Right.

8 MR. GREENBERG: -- we'd like to mark it for purposes
9 of this examination. That will be Plaintiff's Exhibit 142.

10 THE COURT: And you're offering it in evidence, his
11 written report?

12 MR. GREENBERG: We would offer it into evidence,
13 actually, if there's no objection.

14 MR. PHELPS: No objection.

15 THE COURT: Without objection, the report is admitted.
16 What's the exhibit number again?

17 MR. GREENBERG: 142.

18 THE COURT: Very good.

19 BY MR. GREENBERG:

20 Q. All right. Mr. Smith, let's just talk about the report
21 that you prepared for this case.

22 THE COURT: I'd like to get a copy to look at over the
23 weekend.

24 MR. GREENBERG: Oh, 100 percent, Your Honor, we will
25 email that to you tonight.

1 **THE COURT:** All right.

2 **MR. GREENBERG:** And actually, if you're amenable, this
3 would actually be a good breaking point that way you could
4 review the report before we continue.

5 **THE COURT:** We've gotten in a pretty good full day
6 today. Before we break, let me ask, talking about how we might
7 work things out next week with scheduling. Am I correct to
8 assume it's possible that the Government will not need your
9 full 30 hours that you've been allotted?

10 **MR. PHELPS:** I think it's very unlikely.

11 **THE COURT:** It's unlikely you will need it.

12 **MR. PHELPS:** It's unlikely we will need 30 hours.

13 **THE COURT:** All right. So that falls into your
14 suggestion that if you want to call those two witnesses who are
15 on vacation live, the following week, which would be the week
16 of Monday the 12th, if we have a shortened week next week, we
17 won't lose any ground. We'll still finish by Friday the 16th,
18 probably.

19 **MR. PHELPS:** Your Honor, I mean, the only caveat, I
20 would say, is we don't know what their rebuttal case is, who
21 their rebuttal witnesses are. That makes sense to me, Your
22 Honor.

23 **MR. GREENBERG:** Well, Your Honor, on the rebuttal
24 issue, these post-indictment 302s that they're trying to offer
25 into evidence and then they've already shown in part, at least

1 one witness. That's the kind of stuff that's requiring us
2 rebuttal, not just the opening. It's also that. Both.

3 **THE COURT:** I understand.

4 **MR. GREENBERG:** So, I mean, if we could cut out this
5 post-indictment stuff, that would shorten our rebuttal case, we
6 believe.

7 **THE COURT:** Well. Let me think about that.

8 Am I correct, did I understand Mr. Phelps to say that it's
9 likely the Government is not going to call Mr. Tokofsky or
10 Mrs. Ridolfi?

11 **MR. PHELPS:** And the Blomquists, Your Honor, that's
12 correct.

13 **THE COURT:** And the Plaintiff is not going to call
14 them either.

15 **THE WITNESS:** We have no plan to call them, but it
16 would be good to know, rather than likely not, that they
17 actually won't be testifying. Because we, frankly, have been
18 saving time, a lot of time, to tear them apart.

19 **THE COURT:** Well, it sounds like neither side is going
20 to call them. I've had them come up in the past, and usually
21 that means both sides are terrified as to what might come out,
22 and they want to stay away from it.

23 **MR. GREENBERG:** We're not terrified, Your Honor. We
24 just don't want to waste our time. Because right now, the way
25 things are, because we haven't gotten information from the

1 Government about who they're calling and when --

2 **MR. PHELPS:** That's not true --

3 **MR. GREENBERG:** -- until this morning -- excuse me,
4 I'm speaking. Until this morning, we didn't get any --
5 nothing, dates, for when anyone was going to testify, other
6 than the folks that we're calling in our case in chief. And as
7 a result, we're hamstrung. I mean, we don't know, as
8 Mr. Flowers was saying earlier, how much time we need to save
9 for our rebuttal case and also for cross-examinations of folks
10 like --

11 **THE COURT:** Well, let's just try to play it out. How
12 many witnesses do you anticipate going forward to the finish of
13 your case in chief?

14 **MR. GREENBERG:** Including rebuttal witnesses?

15 **THE COURT:** No, just from your case in chief.

16 **MR. GREENBERG:** Case in chief. Let me think here --

17 **THE COURT:** I'm not going to hold you to it, I just
18 want your best estimate.

19 **MR. GREENBERG:** Yeah, I'm just trying to think out
20 loud. So we've got Pam Arnold scheduled for Monday. I'm just
21 trying to think who else. Oh, I'm sorry, Mr. Smith is
22 scheduled for Monday. We've got -- I'm not sure who's going to
23 end up calling them, there's going to be deposition
24 designations for Lori Cannata, formerly Lori Gillin. I
25 assume -- I think she's on the Government's witness list?

1 **MR. PHELPS:** Yes.

2 **MR. GREENBERG:** And on ours. I'm not really sure how
3 that plays out. I think they're on either will or may for us
4 and will for them or vice versa, I'm not sure. How many
5 witnesses -- so there's Arnold, Cannata, Pascale, Wilkinson.
6 Mr. Annappareddy, obviously, would be our -- probably our last
7 in our case in chief.

8 And I'm trying to think if I'm forgetting somebody. Let
9 me pull up the pretrial order. I don't want to misspeak.

10 **THE COURT:** Let's go ahead and excuse the witness.

11 You're excused. You need to be back on Monday at 9:30.
12 Don't discuss the case over the weekend.

13 **MR. GREENBERG:** The clock was stopped a long time ago,
14 right?

15 **THE COURT:** It was stopped when we finished
16 questioning the witness.

17 **MR. GREENBERG:** I just want to make sure. All right.
18 Let me just find the list of witnesses. I'm sorry, Your
19 Honor. Hang on one second. Let me do a word search. All
20 right, I apologize, Your Honor, for that delay.

21 So I think I've named the witnesses we're yet -- we have
22 yet to call. I don't think there's anybody on our may-call
23 list who we're going to call in our case in chief. We may call
24 them in rebuttal, depending on how things play out.

25 Judge Anderson, I didn't know if you heard what I was

1 saying. I apologize for not knowing more quickly or having at
2 my fingertips which witness we have left, but I can tell you
3 now.

4 So there's Pam Arnold.

5 There's, obviously, Jed Smith. That's two.

6 Mr. Annappareddy is three. He'll be last.

7 Ms. Pascale is four.

8 Wilkinson is five.

9 And then Cannata, I'm not really sure who ends up, whose
10 time she counts toward, because it's sort of both sides.

11 **MR. MILLER:** Is that Ms. Gillin?

12 **MR. GREENBERG:** Yeah, she is the same person.

13 **MR. MILLER:** Okay.

14 **MR. GREENBERG:** I should have clarified that. So
15 that's either five or six, depending on whether Cannata ends up
16 being a Government witness or our witness.

17 **MR. PHELPS:** I don't think that really matters, Your
18 Honor. We can play the *de bene esse* video deposition, and my
19 questions can count against me, and their questions can count
20 against them.

21 **THE COURT:** That's fine. So what I'm working towards,
22 you know, I have a day job back in South Carolina, and I've got
23 a jury selection day in early July for a term of court for
24 July, August. And in Columbia, I think it's different. We
25 have one day set out for jury selection for me, and those

1 jurors have already been summoned, and I can't move that
2 around.

3 My hope was, that if we could stick to the 30 hours
4 allotted per side, we could come up, start when we started this
5 week, and try to finish by Friday the 16th. The following
6 Monday is the Juneteenth holiday, so it would not make sense to
7 lapse over that. So I was hoping we could finish by Friday the
8 16th with all of the testimony, if not the testimony and the
9 argument. And I still think we can do that, based on what you
10 said. But I would rather not have a short week next week, and
11 that cause me to come back out the Juneteenth holiday sometime.

12 **MR. GREENBERG:** Your Honor, one possible solution, I'm
13 just going to suggest, and I don't know if it'll be received.
14 They've mentioned Ms. Wilkinson is unavailable, we're not going
15 to ask her to do a Zoom deposition from a boat.

16 Cathy Pascale is not on a boat, and her deposition is not
17 going to take, I don't think, all that wrong -- I'm sorry, her
18 testimony.

19 **THE COURT:** She's the one in Europe somewhere?

20 **MR. PHELPS:** Yes, Your Honor. Your Honor, so there's
21 only two witnesses who don't have availability until that last
22 week, and it's Ms. Wilkinson and it's Ms. Pascale. And he's
23 already said Ms. Pascale is not going to be very long. I don't
24 see why Ms. Wilkinson would need to be very long. And
25 therefore, if any rebuttal case arising out of their testimony

1 shouldn't be significant, they're going to have a dozen
2 witnesses by the middle of next week from which they could
3 derive a rebuttal case or character witnesses to put in at the
4 end of the week and at the beginning of the following week.

5 **THE COURT:** But you -- but you said those two
6 witnesses need some time after they get back and they're not
7 available until the 14th --

8 **MR. PHELPS:** It would be nice if Ms. Pascale could
9 have until the 15th. She lands midnight the 13th, get home at
10 the wee hours of the 14th.

11 **MR. GREENBERG:** I mean, we're -- they're asking for
12 all of these accommodations of Your Honor and the law clerk. I
13 mean, there's a lot of government resources being put into
14 this. To have a break because the prosecutors decided to go on
15 vacation, knowing there was a trial starting no earlier than
16 April 17th, 2023 --

17 **MR. PHELPS:** That's not --

18 **MR. GREENBERG:** -- the scheduling order at the time
19 said no earlier than April 17th, 2023. You know, this is an
20 odd situation where both prosecutors are in Europe right now.

21 **THE COURT:** Well, I don't like the idea of putting
22 them on a Zoom call from Europe. I really don't.

23 **MR. GREENBERG:** All right.

24 **THE COURT:** I really don't. So -- why couldn't we
25 schedule Wilkinson for the 14th and Pascale for the 15th?

1 Would that work?

2 **MR. GREENBERG:** Well, I mean, the issue is that -- and
3 maybe -- let's confer.

4 Yeah, the issue, Your Honor, is that Mr. Annappareddy is
5 going to be our last witness. And you know, when I said
6 Ms. Pascale --

7 **THE COURT:** After those two?

8 **MR. GREENBERG:** Yes. Yes, Your Honor, in our case in
9 chief. And they're planning, apparently, to call -- I don't
10 have his email from this morning in front of me, but -- it
11 doesn't even matter, I'll just say several witnesses, I think,
12 is fair.

13 And when I said Pascale was going to be relatively short,
14 I meant, you know, not as long as Lating and Mosley.

15 **THE COURT:** I imagine the cross-examination of the
16 Plaintiff is going to be pretty lengthy.

17 **MR. GREENBERG:** Well, that is possible. And, you
18 know, so I'm concerned that --

19 **THE COURT:** Let me ask you this: Just honestly,
20 friend to friend, I think sometimes lawyers attach too much
21 significance to the order in which the witnesses are called,
22 especially in a bench trial. I know you probably want to
23 finish with a flourish with your client on the stand. But in
24 practical terms, if you put him up next week and then we hear
25 from the other two witnesses the following week, I don't see a

1 tactical or strategic advantage of calling him last.

2 **MR. GREENBERG:** Well, the issue, Your Honor, is
3 because of the rebuttal witnesses. And we're not going to be
4 able to know until Mr. Annappareddy is finished testifying, you
5 know, who those --

6 Could we have a two-minute break?

7 **THE COURT:** Let's take a recess. You-all talk about
8 it, collaborate between yourselves, and we'll come back in
9 15 minutes and see if we can skin this cat.

10 **MR. GREENBERG:** Very good, Your Honor.

11 **THE COURT:** We'll be in recess for 15 minutes.

12 **THE CLERK:** All rise. This Honorable Court is now in
13 recess.

14 (Whereupon, a recess was taken from 5:38 p.m. to
15 5:59 p.m.)

16 **THE CLERK:** All rise. This Honorable Court resumes in
17 session.

18 **THE COURT:** Please be seated.

19 All right. Let me just say, first of all, I really wish
20 the Government had told me that Ms. Wilkinson and Ms. Pascale
21 were going to be in Europe during the trial. This case is
22 four years old, and these are two principal participants in
23 this case.

24 **MR. PHELPS:** Your Honor, I did. I put it in the
25 motion to bifurcate. It was in there --

1 **THE COURT:** All right. I apologize to you then.

2 But let me just say, we tried to carefully calibrate our
3 schedule so that we could come up here and hopefully finish
4 this by Friday the 16th, and in hoping that would happen, we
5 booked in a lot of court back in Columbia. I don't get any
6 dispensation on my docket in Columbia for coming up here and
7 trying this case at the chief judge's request. So we've got a
8 lot of stuff booked in for late June.

9 But the week of the 20th, we can reschedule everything
10 that's in there, including some criminal pretrials, I can get a
11 magistrate judge to do that. So what I'm suggesting is we can
12 go next week, all week, if necessary, with all witnesses
13 available. Skip over the week of the 12th, skip over it
14 altogether. Come back on Tuesday the 20th, and put up
15 Wilkinson and Pascale on the 20th and 21st. Mr. Annappareddy
16 on the 22nd, plus any rebuttal on the 23rd. Is that doable?

17 **MR. PHELPS:** Your Honor, I'm not available that week
18 without some disappointing rescheduling. But, Your Honor,
19 there's going to be a gap and I don't see any reason why they
20 can't put character witnesses in the gap. As much rebuttal
21 cases available to them in the gap so that we have very little
22 by the end.

23 Ms. Wilkinson and Ms. Pascale are the only ones that have
24 scheduling issues, which is to say that the only rebuttal
25 necessary should be as to anything the two of them say, not any

1 rebuttal as to anything that happened in the previous weeks.
2 That can be rebutted in the days and, frankly, probably even a
3 full week before they testify.

4 **THE COURT:** But if they aren't available until
5 Wednesday and Thursday of the week of the 12th, there's no way
6 Mr. Annappareddy can go up on Friday and testify, can he?

7 **MR. PHELPS:** Why does he have to wait? Why do we have
8 to have empty days in the middle when Mr. Annappareddy could be
9 testifying? Just for the convenience of hearing two more
10 witnesses after he's already heard --

11 **THE COURT:** First of all, how long does each side
12 predict Wilkinson and Pascale will be on the stand? Do we need
13 a full day for both of them or each of them or not.

14 **MR. GREENBERG:** Are you asking us first?

15 **MR. PHELPS:** They're going to go take them first, I
16 assume. They've been subpoenaed by them.

17 **MR. GREENBERG:** So Mr. Phelps just said that the
18 motion to bifurcate mentions their unavailability, the motion
19 to bifurcate filed on March 13th. I'm flipping through it --

20 **MR. PHELPS:** I informed the Court in something. It
21 may not have been the bifurcation. I told the Court of the
22 scheduling and inconvenience of four witnesses. I did.

23 **MR. GREENBERG:** Well, it's not in the motion to
24 bifurcate. I don't know when it was. But regardless --

25 **THE COURT:** My question was how long is Wilkinson and

1 Pascale going to be on the stand? First, just answer that
2 question, please.

3 **MR. GREENBERG:** I would estimate -- I would say --

4 **THE COURT:** On direct, on your questioning.

5 **MR. GREENBERG:** I would estimate at least three to
6 four hours each.

7 **THE COURT:** All right.

8 And the Government's examination of those two, the rest of
9 the day, probably?

10 **MR. PHELPS:** Two hours, no more than two hours for
11 Wilkinson; probably about an hour for Pascale.

12 **THE COURT:** So we can finish those two in two days or
13 maybe even a day and a half.

14 **MR. PHELPS:** Yes.

15 **MR. GREENBERG:** Your Honor, there's a bigger picture
16 issue here; and is that, our client, as the Plaintiff here, he
17 has the burden of proof. And our whole strategy all along was
18 to call him as the last witness in the case in the chief so he
19 can respond to all this stuff.

20 **THE COURT:** I don't begrudge you that. I understand
21 that.

22 **MR. GREENBERG:** And so we actually made an offer to
23 the Government during the recess, we're trying to work this
24 out. And I understand, Your Honor, I have to approve this.
25 I'm not trying to say we're going -- obviously, we want to go

1 to them first. But -- Judge Anderson, but we suggested we
2 would call Mr. Annappareddy out of order in exchange for the
3 Government being willing to give us -- that our rebuttal time
4 not count toward our 30 hours and they rejected it and said,
5 "We'll just say Mr. Annappareddy can come back and testify in
6 response to Wilkinson and Pascale."

7 **THE COURT:** So you want me to put him up out of time
8 in turn for more hours?

9 **MR. GREENBERG:** That was what we had offered. My
10 point is simply that we tried to work it out, and got nothing
11 offered in return, essentially. I don't think we got anything
12 offered. And that was a major concession. I mean, you know,
13 to have our client testify out of order is a huge deal. And,
14 you know, we have the burden of proof. We've been trying to be
15 as efficient as we can be. I think we've used about 11 hours
16 so far. The Government is, you know, to their credit, I think
17 they're being pretty efficient, too. They've used, like,
18 four hours. But they don't have the burden of proof.

19 And meanwhile, they're trying to use 302s, which can be
20 read through very quickly, to introduce multiple levels of
21 hearsay that we then have to respond to in our rebuttal case.
22 It's a mess for us.

23 **THE COURT:** Another option would be go as far as we
24 can go next week, and go home and come back in July. But I'll
25 guarantee you, somebody in this room will have a dog-gone trip

1 to Europe in that week. I'm certain of that. It's really
2 frustrating when I try to schedule trials and people tell me
3 they've got a family vacation, which really is one of their
4 four trips to Europe they take during the year. And I'm not
5 being critical of these two witnesses. But it's frustrating
6 when we're under the gun to move these cases along and nobody
7 but nobody can ever be available.

8 **MR. GREENBERG:** Well, I mean, so these trips to Europe
9 that apparently were supposedly planned long ago, you know -- I
10 mean, everybody knew there was going to be this trial May 31st
11 a while ago. I don't know the exact timing of when it was
12 brought up. But that's kind of why this problem is existing.

13 And so, as Your Honor correctly pointed out, regardless of
14 when Your Honor first learned about it, I would just sort of
15 add that, you know, I think Your Honor's proposal, if I
16 understood it correctly, that we would be amenable, I think,
17 you said take an entire week off and then coming back.

18 **THE COURT:** Mr. Phelps says he's not available that
19 week.

20 **MR. GREENBERG:** Not available?

21 **MR. PHELPS:** That's correct, Your Honor.

22 **MS. FARBER:** Your Honor, if I may. Plaintiff has
23 indicated that they are able to call Mr. Annapparedy out of
24 order. They wanted to do it in exchange for getting unlimited
25 free rebuttal time in their rebuttal case. But that's a thing

1 that they can do. And as Your Honor has repeatedly pointed
2 out, this is a bench trial. Whatever advantage they think they
3 get in persuasion, having Mr. Annappareddy go last, doesn't
4 exist in this case. You are fully able to consider
5 Mr. Annappareddy's testimony partially out of order --

6 **THE COURT:** Go ahead.

7 **MS. FARBER:** I apologize.

8 But if Mr. Annappareddy testifies in that gap that we
9 have, once the defense finishes our case and we put on all of
10 our witnesses, the only two witnesses that remain are
11 Ms. Pascale and Ms. Wilkinson. Mr. Annappareddy can give his
12 full rebuttal testimony in that gap, call any rebuttal
13 witnesses in that gap, and then whatever remains after
14 Wilkinson and Pascale will be very limited just to the
15 testimony of these two witnesses, which, to some extent,
16 Mr. Annappareddy can anticipate because both of them were
17 deposed for nearly seven hours.

18 **THE COURT:** I was going to suggest the possibility of
19 putting Mr. Annappareddy up next week, understanding he can be
20 recalled after Wilkinson and Pascale to go on the stand again
21 to rebut anything they bring out. Again, it's a nonjury trial,
22 and we have the luxury of being able to compartmentalize it
23 like that. What about that? And if I gave you more time.

24 **MR. GREENBERG:** Let me just confer, Your Honor, with
25 Court's indulgence.

1 (Counsel conferring.)

2 **MR. GREENBERG:** So I think Your Honor's proposal makes
3 good sense, given all of the consideration. But I do want to
4 sort of correct the record on a couple of points, though.

5 What Government counsel said about we asked for unlimited
6 rebuttal time is not accurate. We simply asked that our
7 rebuttal time not count toward the 30 hours. We never said we
8 would go on forever, and obviously we won't. We anticipate
9 being as succinct as we can be.

10 The fact that it's a bench trial, obviously, that's
11 different than a jury, but that's not really the issue here.
12 The issue is that it would be inefficient and undermine our
13 case strategy and case theory to have Mr. Annappareddy kind of
14 testify piecemeal, and have other rebuttal witnesses having to
15 testify piecemeal, in light of the situation that's created by
16 the two prosecutors' unavailability. And we can't say that we
17 know from their depositions what they're going to testify to,
18 because it's already apparent from the Government's statement,
19 it's the pretrial order and some of the witnesses' testimony,
20 they're changing their story.

21 So, look, I mean, yes -- the point is -- but here's what
22 we're willing to do, what we would propose, Your Honor. I
23 think this is kind of trying to meet in the middle.

24 That you're -- basically, taking Your Honor's proposal and
25 Mr. Annappareddy starts on June 9th. My understanding is that

1 the estimate from Government counsel for their -- I think
2 they're only going to have three witnesses in their case in
3 chief, if I'm understanding correctly.

4 **THE COURT:** Is that correct, Mr. Phelps?

5 **MR. PHELPS:** Yes, Your Honor. I mean, technically all
6 of these witnesses are our witnesses as well.

7 **THE COURT:** But you can be up and down by Wednesday
8 probably, right?

9 **MR. PHELPS:** Your Honor, depending how long we've got
10 Monday and Tuesday with the rest of his case, but yes. Yes.

11 **THE COURT:** Go ahead, Mr. Greenberg.

12 **MR. GREENBERG:** So, you know, we're going to have
13 Mr. Smith and Ms. Arnold on Monday. Ms. Arnold may go to the
14 next day. Then they're going to have their witnesses. We
15 might have a small gap, but then Mr. Annappareddy starts on
16 Friday. And then I think that would -- and as long as what
17 Your Honor proposed, that he can come back and testify as a
18 rebuttal witness, I think that would probably address our
19 concerns.

20 **THE COURT:** I think that's workable.

21 **MR. GREENBERG:** The other thing that we would
22 respectfully request, Your Honor, is that our rebuttal hours
23 not count towards our 30 hours. And I think that would easily
24 allow us to finish by June 16th.

25 **THE COURT:** For the second rebuttal, what are we

1 talking about, three or four hours?

2 **MR. GREENBERG:** Well, so the issue is that, first of
3 all, because of the way the Government has tried this case so
4 far in its opening statement and 302s, it's not just
5 Mr. Annappareddy who's going to have to be a rebuttal witness,
6 we're going to have to have several others. And their
7 schedules are an issue, and that's kind of a work in progress
8 in flux. But, you know, look, the fact is, these witnesses, we
9 anticipate being brief, like, some of them probably as sort as
10 15 minutes. But, you know, it's not just going to be
11 Mr. Annappareddy.

12 **MR. PHELPS:** Your Honor --

13 **THE COURT:** Can we put some of the rebuttal witnesses
14 up on Monday and Tuesday the 12th and 13th?

15 **MR. GREENBERG:** The 12th and 13th. Let me just think.
16 Your Honor, we will certainly --

17 **THE COURT:** Go ahead.

18 **MR. GREENBERG:** Your Honor, we will -- we will do our
19 best. I just don't want to make any guarantees because we
20 haven't talked to those witnesses about specific dates yet. I
21 mean, we've done to some extent, but, you know, some of them
22 said they have work obligations, and we're trying to work
23 around that. So if we can -- we will certainly do our best to
24 do that. And I think we --

25 **THE COURT:** Well, a federal subpoena supersedes a work

1 obligation.

2 **MR. GREENBERG:** Yes. I mean, some of these folks, I
3 believe, are outside the subpoena range and would just be
4 coming here. At least one, I think.

5 **THE COURT:** What are we talking about for your
6 rebuttal case? After the Government is finished with Wilkinson
7 and Pascale.

8 **MR. GREENBERG:** Your Honor, I mean, that's the thing.
9 I mean, they're talking about calling James Ryan, who, his
10 role, I don't really understand what they're doing. But I
11 mean, his role was almost entirely post indictment. So you
12 know, I don't know. It's hard -- we can't predict until we see
13 what they do.

14 **MR. PHELPS:** Your Honor, I think it's of paramount
15 concern that we finish this on the 16th, even if we have to
16 come back and do a closing argument the following week.

17 **THE COURT:** We could do a closing argument by Zoom.

18 **MR. PHELPS:** As long as the testimony is done on the
19 16th, Your Honor, we'll do anything.

20 **THE COURT:** I don't really have a problem with closing
21 argument by Zoom. But for the testimony, I don't feel
22 comfortable with judging credibility with a Zoom witness.

23 **MR. GREENBERG:** Your Honor, I'm guess I'm just not
24 understanding the paramount importance. I mean, Your Honor has
25 offered to do the following week. I don't understand where the

1 paramount importance is coming from. But putting that aside, I
2 think we can probably finish by the -- be done by the 16th, and
3 probably including closing, I think, if we --

4 **THE COURT:** All right. Let's just work towards that
5 end. Let's just come back Monday. Let me just say this, I
6 have conducted court on Saturday before.

7 **MR. MILLER:** We're here on the weekend.

8 **THE COURT:** I don't know if the government regulations
9 allow that. There's something about turning off the air
10 conditioning over the weekend or something.

11 **MR. GREENBERG:** I think, actually, Your Honor, as long
12 as the Court allows that and has air conditioning and open
13 doors, we would be willing -- we can't do it tomorrow, but the
14 next Saturday.

15 **THE COURT:** Let me explore that with court personnel.

16 **MR. EISER:** Your Honor.

17 **THE COURT:** Yes, sir.

18 **MR. EISER:** Just one request. If we could have --
19 based on this discussion, I would ask for leave to file a brief
20 about what is and what isn't appropriate rebuttal testimony.

21 **THE COURT:** You can do that.

22 **MR. EISER:** That'll save some time.

23 **THE COURT:** I don't know, but it seemed like to me the
24 part that may be overestimating is how much rebuttal we're
25 going to need to hear. I don't know.

1 **MR. GREENBERG:** To be clear, Your Honor, we don't -- I
2 mean, again, I don't want to commit to a number of witnesses or
3 a number of hours without hearing their case in chief, but -- I
4 mean, the rest of their case in chief, I guess, however you
5 want to put it.

6 But, you know, we will be pretty succinct. And, again,
7 if, Your Honor, would be willing to have the rebuttal time not
8 count towards our 30 hours, I think there's no reason why we
9 can't be done on the 16th.

10 **THE COURT:** All right. Well, let's just think about
11 this over the weekend.

12 I will say, though, I said not once, but twice, I didn't
13 want to run short and have short days because witnesses weren't
14 here. And that's exactly what we're facing here.

15 So with that, let's just adjourn, come back at 9:30 on
16 Monday, and we'll try to finalize this on Monday of next week.

17 **MR. GREENBERG:** Your Honor, we are 100 percent serious
18 about Saturday. I mean, we'll do it. We'll do Sunday, too.

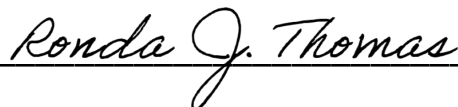
19 **THE COURT:** We'll be in recess.

20 (Adjourned at 6:15 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 2nd day of June 2023.



Ronda J. Thomas, RMR, CRR
Federal Official Reporter

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